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	IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN	1	EXAMINATION INDEX
		2 3	STEPHEN MARK MARVIN: By Mr. Banker 4
	JESSICA TISCHER, individually and as Personal Representative For the	4	By Mr. Banker 4 By Mr. Hayden 92,106
	Spouse and Children of Jacob Tischer,	5	By Mr. Cohen 100
	Decedent, Plaintiff, DEPOSITION	6	_,
	Case No. vs. 3:19-cv-00166-jdp	7	
	UNION PACIFIC RAILROAD COMPANY,	8	EXHIBITS
	a Delaware corporation,	9	Marked for
	Defendant.	10	Identification Page
	UNION PACIFIC RAILROAD COMPANY,	10	14 - 8/14/17 Carson Email 83
	a Delaware corporation, Defendant/Third-Party Plaintiff,	11	
	vs.		15 - Tischer Off Duty Time Between Trips
	PROFESSIONAL TRANSPORTATION, INC., Third-Party Defendant.	12	and On Duty Time Between Trips
		1 2	Spreadsheet 88
	The deposition of STEPHEN MARK MARVIN, taken	13 14	ORIGINAL EXHIBITS WITH ORIGINAL TRANSCRIPT
	under and pursuant to the provisions of Chapter 804		COPIES SUPPLIED TO THE ATTORNEYS
	of the Wisconsin Statutes and the acts amendatory thereof and supplementary thereto, before Stephanie	15	
	J. Peil, Notary Public in and for the State of Wisconsin, at Q & A Court Reporters, Inc., 303 Main	16	
	Street, Eau Claire, Wisconsin, on the 19th day of	17	
	July, 2019, commencing at approximately 12:57 p.m.	18 19	
	ORIGINAL TRANSCRIPT FILED AT THE	20	
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1	APPEARANCES:	1	PROCEEDINGS
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1 (Pages 1 to 4)

Page 5 Page 7 1 Q. Are you comfortable with those ground rules? 1 Q. Do you hold any certifications? You mentioned 2 2 A. Yes, sir. secondary education Bachelor's Degree. Do you 3 hold a teaching certification? 3 Q. And if you need to take a break at some point, 4 let me know, and we'll -- we'll accommodate 4 A. I did, sir. 5 5 that. What, if anything, did you do to prepare Q. For what time? 6 6 for your deposition today? A. Up -- the first six years after high -- after 7 7 A. We had a conversation last night. He was going college it's valid, and then after that -- I 8 8 to -- he basically explained to me my -only taught for one year, so after that it MR. HAYDEN: You don't have to tell him, 9 9 became inactive. 10 but just generally. 10 Q. Are you currently employed? 11 A. Generally. Just general information of how 11 A. Yes, sir. 12 it's going to go. I've never been through one 12 O. By whom? 13 of these, so I was just curious as to how the 13 A. Union Pacific Railroad. proceedings were going to take place. 14 14 Q. How long have you worked for Union Pacific? 15 BY MR. BANKER: 15 A. Since 2014. Q. When you say "he," you're referring to Mr. Q. What do you do currently for Union Pacific? 16 16 17 Hayden? 17 A. I'm a manager of yard operations in Altoona, 18 A. Yes, sir. 18 Wisconsin. 19 Q. Let me start with just a little background, 19 Q. How long have you been the manager of yard 20 biographical information. How old are you? 20 operations in Altoona? A. Two-and-a-half years. 21 21 22 22 Q. Where do you currently live? Q. What did you do before that? 23 A. N48797 Koxlien, K-O-X-L-I-E-N, in Strum, 23 A. I was in Itasca as the manager up there for two 24 S-T-R-U-M, Wisconsin. 24 years. 25 Q. And do you rent there or own? 25 Q. A manager of a yard operation in --Page 6 Page 8 1 A. We own. 1 A. Yes, sir. 2 Q. And do you live there at that address with 2 Q. -- Itasca? How about before that? 3 A. Before that, I worked for the ROTC program at anyone else? 3 4 4 A. My wife, four dogs, and a cat. Creighton University. 5 5 Q. And do you have any plans to move from there in Q. What did you do for the ROTC program at 6 the next 12 months? 6 Creighton? 7 7 A. I was a recruiting and retention officer, and I A. No, sir. 8 Q. Let's just talk briefly about your education. 8 also taught a freshman class. 9 Did you graduate from high school? 9 Q. Have you ever served in the United States Military? 10 10 A. Yes, sir. 11 Q. And then after -- what year did you graduate 11 A. Yes, sir. 12 from high school? 12 Q. When did you -- when did you start that? 13 A. 1986. 13 A. 1993. I retired after 25 years of military Q. After high school, did you attend any college? 14 14 service. 15 A. Yes, sir. 15 Q. Okay. What branch were you with? Q. Where did you go? A. Nebraska National Guard, Army. 16 16 A. University of Nebraska at Lincoln for two 17 17 Q. And what did you do for the Nebraska National 18 years, and I transferred to the University of 18 Guard? Nebraska at Kearney where I received a 19 19 A. I started off as an enlisted soldier, went 20 Bachelor's Degree in secondary education. 20 through officer candidate school. I retired as 21 Q. What year was that? 21 a major. 22 A. 1994. 22 Q. And that -- that was in -- let's see. Started in 1993, so 25 years -- help me with the math 23 Q. And do you -- have you had any formal education 23 since then? 24 24 on that. 23 --25 A. No, sir. 25 A. It was around 2014 that I retired.

Page 9 Page 11 1 A. He was a conductor up in Itasca. 1 Q. What did you do after you retired from the 2 2 Q. And as a manager of yard operations -- is that military? also referred to by the abbreviation MYO? 3 3 A. I was working at -- for the railroad at the 4 4 A. Yes, sir. time. Q. So it --5 5 Q. So as an MYO what, if any -- were you in a 6 A. So it was -- it was dual -- since I was 6 supervisory capacity over Mr. Tischer when --7 7 National Guard, it was part time, so I would A. Yes, sir. serve one weekend a month, two weeks in the 8 O. -- when he was in Itasca? 8 summer of annual training. 9 A. Yes, sir. 9 Q. I see. So maybe I should ask it this way. 10 10 Q. And just as we're talking here, we got to make When did you first start working for UP? 11 sure that I finish and you start. I know it's 11 12 A. In 2014. 12 easy to do, but we don't get a clear record unless we -- we can't talk over each other. Q. And what was the first work that you did for 13 13 14 14 Okay? UP? 15 A. The -- up in Itasca. 15 A. Correct. Q. So we've -- we've kind of covered that. 16 16 Q. So as an MYO you were -- you were a supervisor of Mr. Tischer in Itasca? 17 A. Yes, sir. 17 18 Q. You worked in Itasca as the --18 A. Yes, sir. A. The first year was training --Q. At some point did he move from Itasca to 19 19 20 Q. Okay. 20 Altoona? A. -- was my OMT -- OMT training, so I actually 21 A. Yes, sir. I don't know when. 21 worked out of Council Bluffs, Iowa, and 22 22 Q. Were -- when you were an MY -- were you also an MYO in Altoona? 23 Missouri Valley, Iowa. And then I got -- my 23 24 first duty position was in Itasca. 24 A. I still am, yes. Q. What does OMT stand for? Q. Still am. And so in both Itasca and Altoona as 25 25 Page 12 Page 10 1 1 A. A management trainee. I can't remember what an MYO you were a supervisor of Mr. Tischer? 2 2 the O stands for, but it's a management trainee A. Yes, sir. 3 program. I think it's operational management 3 Q. When we say "a supervisor," you know, how much 4 contact did you have with him on a day-to-day 4 training. 5 5 Q. Did you have a task specialty in the Nebraska basis? 6 National Guard? 6 A. Whenever he came on duty for whatever job he 7 7 A. Yeah, I was an armor officer. was working, I would give them instructions on 8 what was to be done that day. We talked, you 8 Q. What does an armor officer do? 9 A. I'm in charge of, at the time, a platoon of 9 know, casually -- casually too. Q. And so in the deposition of Mr. Franchuk, he tanks, so four tanks, which each tank has four 10 10 was explaining how when a crew comes on duty, 11 crew members. I didn't -- I've done many 11 they get some paperwork. Is what you're 12 things. The last -- the last position I held 12 was an operations officer. So, yeah, a variety 13 describing in terms of giving tasks, do you 13 of different tasks. 14 make that paperwork, or are you -- how does 14 that fit into the mix? 15 15 O. Were you ever deployed with the National --Nebraska National Guard as a --16 A. Part of it. I get the instructions from -- for 16 A. Yes, sir. I was deployed twice. this -- in this case I -- I give -- got the 17 17 instructions from the WN up at Norma as to Q. To where? 18 18 19 A. I was in Iraq in 2003, 2004, and I was in 19 what -- which tracks needed to be pulled, and 20 then I would print off the list of cars that 20 Afghanistan in 2007, 2008. Q. I want to shift gears and talk about Jacob they were to pick up. I also instructed him on 21 21 Tischer. Before August 12th, 2017, did you 22 what tracks needed to go up. 22 23 know Jacob Tischer? 23 Q. What is a W-N up at Norma? A. Yes, sir. A. Wisconsin Northern. Wisconsin Northern 24 24 25 Q. How did you know him? 25 Railroad is the WN. They would contact me to

3 (Pages 9 to 12)

	Page 13		Page 15
1	let me know which tracks were available to	1	Q. 6 p.m.?
2	pull.	2	A. 6 p.m., yes, sir. But, like I said, I was
	Q. And they are what you're doing between	3	on on duty for that day. It was I
4	Altoona and Norma is taking empties up and full	4	believe it was a Friday, so I actually had to
5	cars back, for the most part?	5	work 24-hour coverage that day because we only
6	A. For the most part.	6	at the time I can't think straight. I'm
7	Q. Did you, from your experience having contact	7	sorry. Chess was off it was his days off,
8	with Mr. Tischer, develop an impression of how	8	so I was covering 24-hour coverage.
9	he normally behaved?	9	Q. Who is Chess?
	A. He was a good worker. I liked him a lot. He	10	A. Jerome Chess, the other manager, the other MYO.
11	would always talk about fishing, so we would	11	Q. And is that something you would have to do from
12	discuss fishing stories.	12	time to time is work 24-hour coverage?
	Q. Are you a fisherman as well?	13	A. Yes, sir.
	A. I used to be. I don't have time anymore.	14	Q. So Mr. Tischer and Mr. Franchuk come on duty.
15 16	Q. Did you have any issues with Mr. Tischer before	15 16	You're giving them their work assignment for
	August 12th, 2017, from a safety perspective? A. No, sir.	17	the day? A. Yes, sir.
	Q. Or from an operations standpoint?	18	Q. What was their work assignment for the day?
	A. No, sir. He was a good worker.	19	A. Their work assignment was to take empties up,
	Q. So I want to focus specifically on August 12th,	20	and they were to pull two loads back. So they
21	2017, the day of Mr. Tischer's incident. Do	21	were to go up with empties, come back with
22	you recall that date?	22	loads. And then they were going to go up light
	A. Yes, sir.	23	power, which just means the engines, and they
	Q. How what in what capacity were you	24	were going to pull back another track. I told
25	working on that day?	25	them that at the beginning of their shift.
	Page 14		Page 16
1	A. I was I'm a manager. I was the one that	1	Q. Did you participate in any job safety review
2	gave him the instructions as to what they're	2	that day?
3	doing that day.	3	A. No, sir.
4	Q. So you were on duty when Mr. Tischer and Mr.	4	Q. Would that be your ordinary practice, or is
5	Franchuk came on duty?	5	that something the crews handle themselves?
	A. Yes, sir.	6	A. They handle that themselves.
	Q. Do you remember what time that was?	7	Q. And you gave them some paperwork?
	A. No, I do not, sir.	8	A. Yes, sir.
	Q. Was that a regular job that they were working;	9	Q. What did the paperwork consist of, to your
10	they would go out at the same time every day,	10	recollection?
11 12	or did it vary?	11 12	A. Paperwork consisted of the cars on the track
13	A. Well, no. That job normally starts at 9 a.m. in the morning, but they didn't start at 9 a.m.	13	that they were to pull and I believe the
14	I'm the night manager. So they started you	14	consists they were going to take up and also the the cars from Altoona that they were
15	know, it was it was irregular time of start	15	going to take.
16	for that that job.	16	Q. So are they are they actually assembling
	Q. What time did you come on duty on August 12th,	17	is the train that they're going up to Norma
18	2017, or had it been the day before?	18	with, is that already assembled?
	A. It was that that afternoon I came on duty.	19	A. Yes, sir.
	Q. So you were coming on duty that afternoon to	20	Q. And so they're not having to do any switching
21	work into the night?	21	or assembly; it's ready to go?
22	A. Yes, sir.	22	A. Correct.
23	Q. So what time does the night shift start in	23	Q. And how is that outbound train headed to
24	Altoona?	24	Norma, how is you mentioned light power.
25	A. Normally it starts at 6. So I	25	How is it configured in terms of power?

Page 17 Page 19 1 A. Well, like I said, they'll have -- and, again, 1 so they knew exactly what to do then. 2

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- 2 I don't remember if it was two or three, but
- 3 since it was so busy, I'm guessing it was
- 4 three, three units. And then they would
- take -- they would tack into those -- those 5
- 6 empties, take them up to the WN, and then they
- 7 would take that same set of power, grab a track
- 8 from the WN and pull it down. Then their next
- 9 job would have been to take just the engines
- back up to the WN, grab a second track of 10
- loads, and bring them back down. That was what 11 12 task was -- they were supposed to do that day.
- Q. And was that something you communicated to them 13 14 at the beginning of the shift?
- 15 A. Yes, sir.
- 16 Q. So what happens next in your awareness with
- 17 respect to Mr. Tischer and Mr. Franchuk?
- A. Once I've given them their instructions, I have 18
- other tasks and duties I have to do. So once I 19 20
- saw them heading out the door to get on to their power, I went on to other things. 21
- Q. Okay. And so did you have any more contact 22 with Mr. Franchuk or Mr. Tischer before they 23
- 24 returned back from Norma to Altoona?
- 25 A. No, sir.

1

- Q. So do you know what time it was that you first heard that they're coming back so that you
- 3 4 would grab the paperwork for the second pull? 5
 - A. No, sir. I did not look at my watch when the radio -- when I talked to them -- or heard them on the radio.
 - Q. If you wanted to find out where the train was at a given point, is there any recordkeeping that you're aware of that UP maintains?
 - A. All I know is the AEI readers, and those are vague at best. It tells them when they cross those certain points, but, you know, I don't know how fast or how slow they were going or if they got delayed by the dispatcher or anything.
 - Q. Sure. What is an AEI reader?
 - A. I don't know what the acronym stands for. Basically what it does is each car on each engine has a -- has a chip on the side of it that when it crosses that reader, it goes into the computer system saying that this car crossed this point at this time.
- 23 Q. So am I right in presuming that there are 24 multiple AEI readers out in the -- on the rail? 25
 - A. There are, but between here and -- and

Page 18

- Q. Did you have any communications from them one
- 2 way or another before that point when they 3 returned back to Altoona?
- 4 A. No, sir. I was monitoring the radio. I heard
- 5 that they were on the way back. That's when I
- 6 grabbed the paperwork for their second pull, 7 was heading out -- heading out to the -- the
- 8 yard to get it to them.
- 9 Q. I want to -- I want to be sure I understand what you're saying about the second pull. I 10
- thought I heard you say a moment ago that from 11
- the beginning of the shift it was always the 12
- understanding that they've got to go up twice? 13
- 14 A. Correct.
- 15 Q. But when you heard them coming back on the --16 you heard on the radio that they were coming
- back, there was some paperwork for the second 17 18
 - pull that you were getting?
- 19 A. Correct. I didn't want to give them both tracks at the same time because I didn't want 20 21 to confuse them.
- 22
- 23 A. I gave them only what they needed to know right 24 then and there. And then when they were coming
- 25 back, I was going to give them the second set

- Chippewa, there's only two.
- Q. Do you have access to the AEI data in real time as it's -- as it's reading?

Page 20

- 4 A. I -- I can -- as I -- I can log into it, and as 5 of the time I log in, it would register when --6 if and when a train crosses that AEI reader.
- 7 Q. And then after the data is created, is it -- is 8 it maintained in some place?
- 9 A. I do not know. I'm assuming it is, but I do not know exactly where it is maintained. 10
- O. And what -- what would one see in terms of AEI 11 12 data? Would we see that a particular
- 13 locomotive and particular cars passed a sensor?
- A. Yes, sir. 14
- Q. And, like, a time? 15
 - A. It will have a time stamp on it.
- Q. Have you had an opportunity to look at any AEI 17 data pertaining to this --18
- 19 A. This train?
- 20 Q. Yes.
- 21 A. No. sir.
- 22 Q. And I don't -- maybe I forgot to ask this at
- 23 the beginning. But going back to the 24
- preparation issue. In preparing for this 25 deposition today, did you look at documents to

1 prepare for your deposition? 2 A. No, sir. 3 Q. Okay. So you hear on the radio that Mr. 4 Franchuk and Mr. Tischer are coming back; you grab some paperwork for the second pull. What happens next? 6 A. I drive out to the yard. 9 Q. So where are you driving from? Where are you or east east end of the yard? 10 Q. Okay. Where are you starting that journey? 13 Are you in the — in the yard office. 14 A. I'm in the — I'm in my office in the fasca (sic) yard — in the — in the yard office. 15 Q. Oad is that the same as the depot? 16 Q. And is that the same as the depot? 17 A. Yes. 18 Q. So there's a depot building that has some office space? 20 A. Correct. 21 Q. you start there, grab the paperwork for the second pull. And then to drive to where you're going to go, you have to leave the yard and that when the going to go, you have to leave the yard and the cast end of the yard? 22 yard is on the north end, and there's two entrances: one on the east end, one on the west end. 22 yard is on the north end, and there's two entrances: one on the east end, one on the west end. 24 Q. So what kind of vehicle are you getting into to drive out to the yard? 25 A. Yes, sir. 26 A. A Fast. 27 Q. I hard's why I went to the east because I knew that swhere they verge going to end up. 28 Q. And is that the same as the depot? 29 Q. And is that the same as the depot? 20 Q. So there's a depot building that has some office space? 21 Q. You start there, grab the paperwork for the second pull. And then to drive to where you're going to go, you have to leave the yard and come back into the yard? 2a yard is on the north end, and there's two entrances: one on the east end, one on the west end. 25 Q. So what kind of vehicle are you getting into to drive to the yard? 26 A. A Fast. 27 Q. Nath yill went to the east because I knew that they recoming in from the east end. 29 Q. So what kind for whice where you're going to meet the crew at the east end. 29 Q. So what kind of vehicle are you getting into to drive to where you're going to meet the crew at		2 01		2 22
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3 Q. Okay. So you hear on the radio that Mr. Franchuk and Mr. Tischer are coming back; you 15 grab some paperwork for the second pull. What 16 happens next? 17 A. I drive out to the yard. 18 Q. So where are you driving from? Where are you 19 ————————————————————————————————————		* *		
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7 A. I drive out to the yard. 8 Q. So where are you driving from? Where are you 10				
8 Q. So where are you driving from? Where are you 9				
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A. I'm driving from the Altoona yard around the eastern end of the yard into the yard. Q. Okay. Where are you starting that journey? Are you in the — I'm in my office in the Itasca (sic) yard — in the — I'm in the Yard (sic) yard — in the — I'm in the Yard (sic) yard — in the Yard (sic) yard — in the — I'm in the Yard (sic) yard — in the — I'm in the Yard (sic) yard — in the Itasca of Itasca (sic) yard — in the Itasca of Itasca (sic) yard — in the Itasca (sic) yard — in the Yard (sic) yard — in the Itasca (sic) yard — in the Itasca (sic) yard — in the Itasca (sic) yard — in the Yard (sic) yard — in the Itasca (sic) yard — in the Yard (sic) yard — in the Itasca (sic) yard — in the Yard (sic) yard — in the Yard		Q. So where are you driving from? where are you		, , ,
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16 Q. And is that the same as the depot? 17 A. Yes. 18 Q. So there's a depot building that has some office space? 29 A. Correct. 20 Q. You start there, grab the paperwork for the second pull. And then to drive to where you're going to go, you have to leave the yard and come back into the yard? 21 d. Correct. The only way in and out of the actual 22 demands on the north end, and there's two entrances: one on the cast end, one on the drive out to the yard? 21 d. So I know if I went to the west end, I would still have to drive through the east end to talk to them, so I just went in through the east end of the yard. 22 d. Correct. 23 Q. Pous start there, grab the paperwork for the second pull. And then to drive to where you're going to meet the crew at the east end? 24 come back into the yard? 25 A. Correct. The only way in and out of the actual 25 Q. That's just how things work? 26 A. Correct. The only way in and out of the actual 26 A. I —I pull in. I park east of the shanty because Mr. Franchuk is — is waving at me to — he wanted to talk to me. 26 Q. So what kind of vehicle are you getting into to drive out to the yard? 27 A. The only time I remember is I —I 1				
17 A. Yes. 28 Q. So there's a depot building that has some office space? 29 A. Correct. 20 Q. You start there, grab the paperwork for the second pull. And then to drive to where you're going to go, you have to leave the yard and come back into the yard? 29 A. Correct. The only way in and out of the actual 29 A. Correct. The only way in and out of the actual 20 Page 22 21 yard is on the north end, and there's two entrances: one on the east end, one on the west end. 21 Q. So what kind of vehicle are you getting into to drive out to the yard? 22 entrances: one on the east end, one on the west end. 3 west end. 4 Q. So what kind of vehicle are you getting into to drive out to the yard? 4 A. A Ford Explorer. 5 Q. Do you know what time it was that you got into that Ford Explorer and drove out to 4 A. Thethe colly time I remember is I I arrived in the yard sometime after 8 p.m. 4 Q. And why do you have a recollection of that particular time? 4 A. Because I I glanced at my watch as I was leaving, and it was right around sometime after 8 p.m. is when I got there. 20 So sure. So you leave the depot with the east end to tak to them, so I just to the the act end to take to them, so I just unten in trough the east end to take to them, so I just unten that the yard in the east end? 20 A. Correct. 21 Q. Because you're going to meet the crew at the east end? 22 A. Correct. 23 Q. That's just how things work? 24 A. Um-hum. 25 Q. So you're driving to the east end to the east end? 24 A. Um-hum. 25 A. I I pull in. I park east of the shanty because Mr. Franchuk is is waving at me to he wanted to talk to me. 24 A. I I pull in. I park east of the shanty because Mr. Franchuk is is waving at me to he wanted to talk to me. 25 A. Just from working in the yard, just, you know, me being manager I've seen him on severals occasions working because they work almost every day. 26 Q. So kind of an acquaintance? 27 A. Yes, sir. 28 A. Ferd Explorer, where are you headed? 29 A. Black to them, so I just them the east				
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7 Q. Is that a company vehicle? 8 A. Yes, sir. 9 Q. Does that company vehicle have any sort of GPS tracking system? 10 tracking system? 11 A. I do not know if it does or not. 12 Q. Do you know what time it was that you got into that Ford Explorer and drove out to 13 that Ford Explorer and drove out to 14 A. The the only time I remember is I I arrived in the yard sometime after 8 p.m. 15 arrived in the yard sometime after 8 p.m. 16 Q. And why do you have a recollection of that particular time? 17 particular time? 18 A. Because I I glanced at my watch as I was leaving, and it was right around sometime after 8 p.m. is when I got there. 20 So syou're traveling into the yard in the Ford Explorer, where are you headed? 21 Q. Sure. So you leave the depot with the 22 Ford Explorer, where are you headed? 23 A. Please define the question. 24 Q. Sure. So you leave the depot with the 25 A. Just from working in the yard, just, you know, me being manager I've seen him on severals occasions working because they work almost every day. 26 A. Just from working in the yard, just, you know, me being manager I've seen him on severals occasions working because they work almost every day. 27 A. Just from working in the yard, just, you know, me being manager I've seen him on severals occasions working because they work almost every day. 28 A. Just from working in the yard, just, you know, me being manager I've seen him on severals occasions working because they work almost every day. 29 A. Just from working in the yard, just, you know, me being manager I've seen him on severals occasions working because they work almost every day. 20 So kind of an acquaintance? 21 A. Yes, sir. 22 A. He's waving you down. What happens next? 23 A. He waves me down, I park the truck, turn it off. I walk over to Mr. Franchuk. He expresses concern that he says that he don't he doesn't think Tischer is feeling very well and if I would go and talk to him. I said I would. 23 A. I am standing next to him next to the engines on Track 5.	5	· · · · · · · · · · · · · · · · · · ·		
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Q. Sure. So you leave the depot with the 24 on Track 5.				
	25		25	Q. And when he says, Go talk to Mr. Tischer, do

6 (Pages 21 to 24)

	Page 25		Page 27
1	you know where Mr. Tischer is?	1	A. No, sir.
2	A. He never told me to go talk to Tischer. He	2	Q Tischer calling his wife?
3	asked me if I would talk to him.	3	A. No, sir.
4	Q. So when he asked you to go talk to Tischer, did	4	Q. Are you able to make any estimate of the amount
5	you have an understanding of where Tischer was?	5	of time that passed between first hearing from
6	A. I at the time I did not know. I turned	6	Mr. Franchuk that there was an issue to where
7		7	
8	around and I saw him, and then I went over and	8	you told Mr. Tischer, Go back go to the
9	talked to him.	9	depot and call your wife, you're going home?
10	Q. So when you turned around and you saw Tischer, where was Tischer?	10	A. I do not know. I mean, you can check my phone
11			logs as to when I called Mike Swentik because
	A. He was standing over by the PTI vehicle.	11	I I told him to go back to the office right
12	Q. Outside of it?	12	after I told Mike that I was sending him home.
13	A. Outside of it.	13	Q. Was it a personal phone or company phone?
14	Q. So you walked over to him?	14	A. Company phone.
15	A. Yes, sir.	15	Q. Did you when you say "phone logs," do you
16	Q. What happened next?	16	mean a separate log that you've maintained, or
17	A. I walked over to him. I asked if he was	17	do you mean
18	feeling okay. He said he was. I said, Are you	18	A. No, I mean just the phone log from the phone.
19	sure? Neil has expressed concern that you're	19	Q. Whatever the phone has?
20	not feeling well. Are you okay? He says, Yes,	20	A. Right.
21	I'm fine.	21	Q. Do you know whether your phone currently has
22	Q. What happened next?	22	logs that go back two years?
23	A. What happened next? He from from my	23	A. I do not know. It's the same phone number I've
24	visual of him, he didn't he looked like he	24	always had.
25	was sick. He didn't he looked like he may	25	Q. So you talked to Mr. Tischer, you're near the
	Page 26		Page 28
1	have the flu or something like that. I didn't	1	shanty, you tell him you're sending him home,
2	know for sure, but he wasn't he didn't look	2	call your wife, go to the office and wait.
3	like his normal self. He didn't look well. I	3	What happens next?
4	said, Are you sure you don't need help, you	4	A. I I was talking to Franchuk and those guys,
5	don't need any medical attention. He goes, No,	5	and I thought maybe he might be having a
6	I'm fine, I'm fine. And I said, Okay, let	6	like a diabetic attack or something like that.
7	me let me go talk to somebody. So I went	7	I know he never said anything about diabetes,
8	back to my vehicle, got in the vehicle, and I	8	but just from the way he was acting to me
9	called Mike Swentik, who is my boss, and I told	9	seemed like he was he was going through
10	him, I said, I don't think Tischer is feeling	10	he needed some sugar. So while he was getting
11	well. I'm going to send him home. So I got	11	in the cab to come back to the office, I got in
12	back out of the vehicle, went back, talked to	12	my vehicle, drove to the gas station, bought a
13	Tischer. I said, You're not feeling well. I	13	Gatorade and a candy bar and headed back to
14	said, I don't want you driving home. I want	14	the back to the office.
15	you to call your wife when you get back to the	15	Q. Let me just back up a step. So when you say
16	office to have her come pick you up, and stay	16	one of the ideas that you have in your head is
17	there until I get back.	17	some sort of diabetic attack, do you have any
18	Q. Now, you mentioned when you first got to the	18	personal experience with that, or what what
19	yard before you talked to Franchuk, before he	19	is that based on?
20	waved you down, that you looked at your watch	20	A. I have don't have anybody in my family that
21	and it was a little bit after eight?	21	has diabetes, but, you know, I've seen TV shows
22	A. Yes, sir.	22	about it. I've judging from his his
23	Q. Did you look at your watch again at any point	23	vehicle, he had a lot of fast-food containers
24	in what you know, from that point up to what	24	in there, so I don't he and he didn't
25	you've just said about	25	seem like he was eating that healthy. But it

	Page 29		Page 31
1	just from the way he was acting, it seemed	1	maintain control of the power, so he's there.
2	like he was lethargic, and that's one of the	2	Q. So when you first came into the yard, you're
3	signs I know of diabetes.	3	talking with Franchuk near the power?
4	Q. Let me back up a step. So, you know, you've	4	A. Yeah. He was he had just gotten off the
5	spent a long time in the Nebraska National	5	steps, and I I talked to him right there at
6	Guard. As part of your training with the	6	the power because I know he couldn't stray from
7	National Guard, did you receive any first-aid	7	the power.
8	training?	8	Q. So he stays there?
9	A. Yes, we received first-aid training.	9	A. Yes, sir.
10	Q. Is it kind of the basic first-aid training	10	Q. You go to the shanty where you're talking with
11	everybody gets in basic first-aid training?	11	Tischer?
12	A. Yes, sir.	12	A. Yes, sir.
13	Q. Did that inform your impression that this might	13	Q. Is there anybody else there at that point?
14	be a diabetic attack of some sort, or are we	14	A. Again, I don't know where they were at, but I
15	just talking about general life experience?	15	know that the the switch crew was around
16	A. Just general life experience.	16	there.
17	Q. Did you have any first-aid training that was	17	Q. Thomas and Lowe?
18	provided by Union Pacific when you started to	18	A. Correct.
19	work for Union Pacific?	19	Q. How about do you know who Chaz Lux is?
20	A. Yes, sir.	20	A. Yes, sir. He's the PTI driver.
21	Q. Was that different than what you'd received	21	Q. Was Mr Mr. Lux there at the shanty at that
22	from the Nebraska National Guard?	22	time?
23	A. Yes, sir.	23	A. I believe he was in his vehicle.
24	Q. In what way?	24	Q. So when you say you're sending when you tell
25	A. The training for the Union Pacific Railroad was	25	Mr. Tischer you're sending him home, call your
	Page 30		Page 32
1	mostly on CPR and then just basic first aid.	1	wife, and go to the office, what does Mr.
2	My military training is based on heat	2	Tischer do next?
3	casualties, cold casualties, wound wound	3	A. He he gets in the cab and goes to the
4	dressings, sucking chest wounds, you know,	4	office.
5	combat-type issues.	5	Q. The cab driven by
6	Q. Sure. Okay. So you mentioned that when you	6	A. The PTI cab, yes, sir.
7	were talking to Franchuk and you said "those	7	Q. And and are you immediately then when Mr.
8	guys," that you thought this might be a	8	Tischer gets into the cab and goes, are you
9	diabetic attack, who is the who is the	9	immediately getting into your car and going?
10	"those guys" that	10	A. Well, like I said, I had a discussion about the
11	A. That would be the the switch crew that was	11 12	diabetes, and then as soon as that discussion
12 13	there.	13	was done, I got in the cab in my vehicle and
$\frac{13}{14}$	Q. Do you remember their names?A. That would be Lowe and I don't know the	14	drove to the gas station and then back to the office.
15	other guy. I can't remember his name. Just	15	Q. And the office being the depot?
16	drew a blank. John.	16	A. Correct.
17	Q. John Thomas?	17	Q. So what happens next after you got the Gatorade
18	A. Yeah, John Thomas.	18	and the candy bar?
19	Q. So John Thomas and Harold Lowe are at the	19	A. I drive back to the depot. As I'm pulling into
20	shanty as this is	20	the parking lot, I notice the passenger's side
21	A. They're mulling around. I'm I'm not	21	door is open, and I get out, and I walk around
22	really don't really know exactly where	22	the back of the PTI vehicle and see Jake on the
23	they're at because I'm focused on Jake.	23	ground with his left leg still in the vehicle.
24	Q. Jake is there. Is Franchuk there?	24	Q. As though he had fallen?
25	A. No. He's on the power because he has to	25	A. He had fallen out, yes, sir.

8 (Pages 29 to 32)

	Page 33		Page 35
1	Q. So what did you do?	1	at the depot prior to the depot?
2	A. What did I do? I immediately went over to him	2	A. No, sir.
3	and asked if he was okay. At that point I saw	3	Q. And then you called 911?
4	that his left left side of his face was	4	A. Yes, sir.
5	drooping. I went to go pick him up. He	5	Q. Did you use your mobile phone for that?
6	couldn't move his left arm, and he couldn't	6	A. I used my work phone, yes, sir.
7	push with his left leg. It was just dragging.	7	Q. How did you make the determination to call 911
8	At this point Chaz comes out. I asked Chaz if	8	at that point?
9	he would grab his jacket and use it as a pillow	9	A. Well, it's obvious when he was on the ground
10	to support Jake's head. So while he was doing	10	and he can't can't move the left side of his
11	that, that's when I contacted 911.	11	body, he's in serious trouble, so that's why I
12	Q. I want to go back just a step here. You said	12	called 911.
13	the left side of Mr. Tischer's face was	13	
14		14	Q. Was he had his condition changed from when
	drooping?	15	you last saw him at the shanty?
15	A. Yes, sir.	16	A. Well, when I left the shanty, he was still
16	Q. What is that what did you see?		walking, coherent, and cognitive. When he was
17	A. That was that's the signs of stroke.	17	at the depot, he was on the ground and couldn't
18	Q. What do you base that statement on?	18	move, but he was still coherent. I could still
19	A. My training through the UP. We had again,	19	understand what he was saying.
20	along with our CPR, there was a little bit of	20	Q. Sure. I just want to make sure I get all the
21	training on on stroke.	21	perspectives on this. So Mr. Tischer is
22	Q. When you say left side of his face was	22	he's on the ground. You're trying to help him
23	drooping, what does that actually look like?	23	up, but he's he's unable his left arm
24	A. Well, the mouth sags down, the cheek goes down.	24	isn't helping, his left leg isn't helping. At
25	Like when I went to help him, when I went to	25	some point Mr. Lux comes out of the depot, and
	Page 34		Page 36
1	pick him up, he couldn't move his left arm.	1	Page 36 you're trying to get him to help too?
1 2		2	
	pick him up, he couldn't move his left arm.		you're trying to get him to help too?
2	pick him up, he couldn't move his left arm. His left arm was just there, but his right arm	2	you're trying to get him to help too? A. Yes, sir.
2 3 4 5	pick him up, he couldn't move his left arm. His left arm was just there, but his right arm was wrapped around me this way (indicating).	2 3	you're trying to get him to help too? A. Yes, sir. Q. Is there any conversation at that point between
2 3 4	pick him up, he couldn't move his left arm. His left arm was just there, but his right arm was wrapped around me this way (indicating). Q. Okay.	2 3 4	you're trying to get him to help too? A. Yes, sir. Q. Is there any conversation at that point between you and Mr. Tischer?
2 3 4 5	 pick him up, he couldn't move his left arm. His left arm was just there, but his right arm was wrapped around me this way (indicating). Q. Okay. A. And then when he went to try and get up, he went to push off with his right foot, but his 	2 3 4 5	you're trying to get him to help too? A. Yes, sir. Q. Is there any conversation at that point between you and Mr. Tischer? A. I I'm just talking to him, Hey, are you
2 3 4 5 6	 pick him up, he couldn't move his left arm. His left arm was just there, but his right arm was wrapped around me this way (indicating). Q. Okay. A. And then when he went to try and get up, he went to push off with his right foot, but his left foot didn't move. Because normally when 	2 3 4 5 6	you're trying to get him to help too? A. Yes, sir. Q. Is there any conversation at that point between you and Mr. Tischer? A. I I'm just talking to him, Hey, are you okay, are you okay, and he says he was
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	pick him up, he couldn't move his left arm. His left arm was just there, but his right arm was wrapped around me this way (indicating). Q. Okay. A. And then when he went to try and get up, he went to push off with his right foot, but his left foot didn't move. Because normally when you would get up, you would push off with both your feet. Q. Sure. A. He couldn't move his left leg either. Q. Had you ever before August 12th, 2017, had you ever seen facial drooping before? A. No, sir, not on a I have never seen a stroke victim before. Q. So when you're seeing Mr. Tischer display this facial drooping at the depot, you made an association in your mind between what you were seeing really for the first time and your prior training about strokes and made a connection that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	you're trying to get him to help too? A. Yes, sir. Q. Is there any conversation at that point between you and Mr. Tischer? A. I I'm just talking to him, Hey, are you okay, are you okay, and he says he was saying to me, I you know, I couldn't move my left side. Q. As he spoke, did you observe or did you hear any slurring of his words? A. No, sir. Q. Did you have any conversation beyond that his left side wasn't moving? A. No, sir. We tried once to pick him up, and he it was he was like he was deadweight. He couldn't move. And then I didn't want to move him anymore, so I said that's when I had Chaz put something under his head as a pillow, and that's when I called 911.
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Q. So you call 911. What is the substance of the call with 911? A. Called 911, gave them my location, told them that I had an employce that was in need of assistance and that he may have had a stroke. And then they started to talk to me, asking me questions to ask Mr. Tischer. He would relay the questions to Mr. Tischer. He would respond, and I would relay those back to the 91 caller (sic). Q. So what questions did the 911 dispatcher ask of you to ask of Mr. Tischer. Q. Was that was the general subject matter? Were they asking kind of A. I do not remember. A. They were diagnostic questions to determine the ailment or whatever is wrong with Mr. Tischer at that point as to when this incident started? Q. Was there any questions asked of Mr. Tischer at the whort his incident started? A. No, sir. Q. Were you able — was Mr. Tischer able to answer all of the questions that you relayed from the Page 38 dispatcher? A. They long did it take after you called 911 before there was some sort of first responder? A. They long did it take after you called 911 before there was some sort of first responder? A. They police. The police, their offices are about three blocks down. Q. So the police arrive on scene? A. The police. The police, their offices are about three blocks down. Q. Who was the first person to arrive on the sace? Q. Who was the first person to arrive on the saking what's going on. Texplained to him that be on the ground, we had a lot of conversations and whe would—we had a lot of conversations and discussions when the call came in from Josh Tischer, do you remember any other specifics of that conversation? A. The was da so a manager for the the conversations and discussions when the call came in from Josh Tischer, do you remember any other specifics of that conversations and the submance of conversations and the submance o		Page 37		Page 39
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21 Q. Did you have any information at that point as to when this incident started? 22 A. Yes, sir. 23 A. No, sir. 24 Q. Were you able was Mr. Tischer able to answer all of the questions that you relayed from the 25 all of the questions that you relayed from the 26 A. Yes, sir. 27 A. Yes, sir. 28 Q. Was there any other kind of first responder there? 29 A. Yes, sir. 30 Q. How long did it take after you called 911 before there was some sort of first responder? 40 A. I do not know. 41 Q. Who was the first person to arrive on the scene? 42 A. The police. The police, their offices are about three blocks down. 43 Q. So the police arrive on scene? 44 A. Yes, sir. 45 A. I do not know. 46 Q. Who was the first person to arrive on the scene? 47 Q. So the paramedics arrive. What happens next? 48 A. Paramedics get out, I show them where he's at, I explain what's going on, and then they go and assist Mr. Tischer. I back away because I don't want to get in their way. 46 Q. What happens next? 47 Q. What happens next? 48 A. I en bolice pull up. I I tell them what's going on. They say, There's an ambulance en route. At that point, I get a call from Jake's brother on the on my phone asking what's going on. I explained to him that he's on the ground, I've called the paramedics, they're on the way. 49 Q. Who is Jake's brother? 40 Q. Was that someone that had previously worked for the railroad? 41 A. Yes, sir. 42 A. Yes, sir. 42 G. Was there any other kind of first responder therea ambulance? 42 A. No, sir. There was just the the two police officers and the two paramedics. 51 Q. So no fire truck? 62 A. No fire truck? 63 A. No fire truck? 64 A. No fire truck? 65 A. No fire truck? 66 A. No fire truck? 67 Q. What happens next? 68 A. Paramedics get out, I show them where he's at, I explain what's going on, and then they go and assist Mr. Tischer. I back away because I don't want to get in their way. 69 Q. When is Jake's brother on the on my phone asking what's going on. I explained to him that he's on the ground, I've cal				
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10 (Pages 37 to 40)

			1
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1	A. I go back in the office. I don't remember	1	evening, so it would probably be the next day,
2	exactly what what I did. I I don't want	2	I'm assuming.
3	to speculate because I don't remember. I do	3	Q. Did you have any further involvement in this
4	know later on that night when my boss, George	4	incident after you went off duty on the 12th of
5	(sic) Swentik, comes in, we both go down to the	5	August
6	hospital and try to find out how Tischer is	6	A. No, sir.
7	doing, and then we were asked to leave.	7	Q 2017? Did you ever learn what became of Mr.
8	Q. Is the hospital the same thing as the Mayo	8	Tischer?
9	Clinic?	9 10	A. I would ask the crews, and they would they
10 11	A. Yes, sir.	11	would tell me what's going on. But other than
12	Q. And so you and Mr. Swentik go to the hospital.	12	that, that's all I knew was just was just
13	Who asked you to leave the hospital?	13	hearsay. Q. What was the hearsay?
14	A. We were talking to the receptionist, and the receptionist told us on behalf of the family we	14	A. Hearsay was that he was in the hospital, and at
15	were asked to leave.	15	first he was doing well, and then I had heard
16	Q. Do you know what time that was?	16	that he had passed away.
17	A. No. It was I don't remember. It was really	17	Q. So do you know so I want to now I'm going
18	late.	18	to jump around and ask some follow-up questions
19	Q. What did you do after that?	19	on the kind of the overall timeline. Do you
20	A. Well, I was actually off duty. I went home.	20	know whether the well, first of all, are you
21	Q. Did you have any other conversations with	21	familiar with the technology by which
22	anyone that night of August 12th that we	22	locomotives will sometimes have inward-facing
23	haven't talked about?	23	cameras?
24	A. No, sir.	24	A. Yes, sir.
25	Q. Did you prepare any notes regarding this	25	Q. Are you aware of whether any of the power that
	Page 42		Page 44
1	incident on August 12th?	1	was involved in Mr. Tischer or Mr. Franchuk's
2	A. No, sir.	2	work on August 12th, 2017, had inward-facing
3	Q. How about after?	3	A. No, sir. There's no way for me to identify
4	A. No, sir.	4	locomotives, which ones do not or do have
5	Q. Did you prepare any electronic documents	5	inward-facing cameras.
6	regarding this incident	6	Q. Is it is it true that some do and some
7	A. No, sir.	7	don't?
8	Q either on August 12th or after?	8	A. They at that time they were starting to
9	A. No, sir.	9	institute them more, so, like I said, I did not
10	Q. Did you have to fill out any sort of incident	10	know which ones did and which ones did not.
11	report or supervisor's report?	11	Q. Have you had an opportunity to view any
12	A. I did I did talk to Jamie Lukehart.	12	locomotive inward-facing locomotive video
13	Q. What do you understand Ms. Lukehart's role to	13	from August 12th, 2017
14	be?	14	A. No, sir.
15	A. She was just wanting to know the facts of what	15	Q pertaining to Mr. Franchuk or Mr. Tischer?
16	happened. I explained to her exactly the same	16	A. No, sir. Sorry. I didn't mean to interrupt.
17	thing I'm talking to you about.	17	Q. Sure. Did Mr. Tischer say anything to you at
18 19	Q. Sure. But what what is her role for UP?A. I can't remember her exact title.	18 19	the beginning of his shift that he wasn't feeling well?
20	Q. Had you known her before August 12th?	20	A. No, sir.
21	A. I've I've known who she was, yes, sir.	21	Q. Did Mr. Franchuk say anything to you about Mr.
22	Q. And are you're having that communication	22	Tischer not feeling well at the beginning of
23	with her on August 12th?	23	his shift?
24	A. I don't remember if it was the 12th or if it	24	A. No, sir.
25	was afterwards because that was late and in the	25	Q. Are you aware of the circumstances leading up
-	and the same of th	_	i j i i i i i i i i i i i i i i i i i i

11 (Pages 41 to 44)

	Page 45		Page 47
1	to Mr. Tischer beginning work at 1402 that day?	1	Q. What what is the attendance policy, if you
2	A. Say again. I'm sorry.	2	could explain that?
3	Q. Sure. So Mr. Tischer began work at 1402.	3	A. The attendance policy is based on habits of
4	A. Um-hum.	4	layoffs. If they lay off multiple times in a
5	Q. Are you aware of how it was that he was called	5	week or multiple weekends in a row, it's to try
6	up to report for work that day?	6	and maintain crew base and not having everybody
7	A. Not until today about the the canceled call.	7	laying off at the same time.
8	I don't I didn't remember that.	8	Q. So that there's always
9	Q. Is that something that you would have been	9	A. And if if they determine a pattern of
10	aware of at the time or not?	10	violating that policy, then they can be brought
11	A. Yes, sir, I would have been aware of that, that	11	up on on with with a letter of
12 13	his call was busted at the time, and then he	12 13	reprimand.
$\frac{13}{14}$	he called later on when the engineer was on	14	Q. So you're trying to maintain a
15	duty. Q. And I tell me in your own words what does a	15	A. Trying to maintain a crew base and make sure that everybody gets days off.
16	busted call mean.	16	Q. So you're trying to maintain a high level of
17	A. Busted call means that he was called for the	17	availability, basically?
18	job before they called the engineer. There was	18	A. No. We're trying to make sure that everyone is
19	no engineer available, so they called him back	19	available to work when they're supposed to work
20	and said, Don't come to work yet, there's no	20	and that everybody gets days off when they're
21	engineer to come to work at this time. So	21	supposed to get days off.
22	that's a busted call.	22	Q. How do the how do the days off work? Is it
23	Q. So that's a busted call. And so then did he	23	set?
24	when they call him back and say, We don't have	24	A. No, not for him. He was, I think, on I
25	an engineer, are they able to say when they	25	believe he was on the extra board. The extra
	Page 46		Page 48
1	will have an engineer?	1	board only works when the normal crew isn't
2	A. Yes, sir.	2	available to work.
3	Q. So in what sense is it busted, or is that	3	Q. So by
4	A. Busted means it just means that they for	4	A. So they get they get called in random times
5	timekeeping purposes, the the clock stops	5	at random days. He could go every day for five
6	there, so he doesn't actually start time	6	days, or he'd go one day and then have three
7	until because he would have started his day	7	days off, and then he'd come back again the
8	at 9, so when they bust the call, that means	8	next the fourth day.
9 10	his time doesn't start at 9. The time he	9	Q. So extra board is sort of you're on call
11	starts working is, since you said 1402, is when the clock starts for him.	10 11	A. Yeah, they're on call.Q to work when needed?
12	Q. I see. Does UP have an attendance policy for	12	Q to work when needed? A. Um-hum.
13	conductors?	13	Q. And when you get a call when you're on the
14	A. They they do for all employees.	14	extra extra board, you're expected to be
15	Q. How does how does that work with a busted	15	available?
16	call?	16	A. Yes, sir.
17	A. It's just there's there's no	17	Q. And how do you do you have any when
18	repercussions. There's nothing because it's	18	you're working the extra board and you're on
19	just saying just telling the conductor, Hey,	19	call like that, do you have any ability to plan
20	you're not going to come on duty at this time,	20	for not working, or how does that work?
21	you're going to come on duty at this time.	21	A. If they know where they're at on the list
22	Q. So do you if your call is busted, do you	22	it's called being first out. If they're at the
23	have to come on duty at the later time or is	23	top of the list, they're first out. That means
24 25	that optional?	24	that the next train that needs a conductor,
) L	A. Honestly, I don't remember.	25	they would get called for that train. So if

	Page 49		Page 51
1	they are, like, second or third out, if they	1	Was there any disagreement between the two of
2	know they have something to do that day and	2	you about whether you were going to send him
3	they don't want to get called, they can always	3	back up to Norma?
4	lay off sick or take a personal day or	4	A. I hadn't discussed that with him yet.
5	whatever. They they have some say in in	5	Q. You were here when Mr. Franchuk was testifying
6	where when they work.	6	earlier today?
7	Q. Was there was there an issue on August 12th,	7	A. Yes, sir.
8	2017, where Mr. Tischer got bumped up on the	8	Q. You heard him say that you were trying to send
9	list because someone called out in front of	9	the crew back up to Norma despite the fact that
10	him?	10	he was saying Mr. Tischer is sick and that you
11	A. I do not know that information.	11	had offered as an explanation that you were
12	Q. Would you have known it at the time?	12	feeling a lot of pressure from Mr. Martinez.
13	A. At the time I would have, yes, sir.	13	Would you agree with that or disagree with
14	Q. But I take it that's that's the reason for	14	that?
15	having a list of people is that sometimes that	15	A. I told them at the beginning of their shift
16	will happen	16	they were doing two pulls.
17	A. Yeah.	17	Q. Okay.
18	Q someone someone will call in sick?	18	A. Their at the time we were running a lot of
19	A. And that's and that's out of my control.	19	sand, so there was a need for us to do two
20	The people that call crews to come on duty is	20	pulls that day.
21	CMS. I didn't can't remember what the	21	Q. Sure.
22	acronym stands for. But they're the	22	A. But the safety of my crew members comes first,
23	they're crew management systems. Excuse me.	23	and I didn't send them the second time because
24	They're the ones that call conductors and	24	of the safety issue.
25	engineers to come on duty. I have no say in	25	Q. But I just want to I want to focus very
	Page 50		Page 52
1	that.	1	specifically on when you first learned from Mr.
2	Q. So is that like	2	Franchuk that Mr. Tischer is sick. Was there
3	A. That's they're in Omaha. That's a ways away	3	any discussion or pushback or disagreement
4	from me.	4	between the two of you about whether or not
5	Q. So they are calling up crews to work and making	5	they were going back to
6	sure that there's	6	A. No, sir.
7	A. Right. And they go straight off the boards.	7	Q. Did you at any time express to Mr. Franchuk
8	The next one on the list gets called.	8	that you were having you were under pressure
9	Q. So you had talked about knowing Tischer well	9	from Mr. Martinez?
10	enough as an acquaintance at least to have a	10	A. I do not believe so.
11	sense of how what normal was for him?	11	Q. Who is Mr. Martinez?
12	A. Yes, sir.	12	A. Mr. Martinez is director of terminal
13	Q. And that so, I mean, where would you put the	13	operations. He is basically Mike Swentik's
14	line as when you would say, I first noticed	14	boss. So he's two levels above me.
15	that something wasn't right with Jacob Tischer?	15	Q. What's his first name?
16	A. When I was talking to him by the shanty, I	16	A. Paul.
17	could tell something was not right with him.	17	Q. The chain of command is Martinez
18	He looked ill, and that's when I determined to	18	A. Paul Martinez, George Swentik, and then me.
19	send him home.	19	Q. So understanding that you don't recall it, is
20	Q. Was there so focusing on the time when you	20	it your testimony that it is not even possible
21	come into the yard after Franchuk and Tischer	21	that you said that when you listened to Mr.
22	have come into Track 5. Okay?	22	Franchuk's account of this?
23	A. Um-hum.	23	A. Say again.
24	Q. You get out of your car, and you talk to	24	Q. Sure. So Mr. Franchuk testified, Mr. Marvin
25	Franchuk, and he tells you Mr. Tischer is sick.	25	told me he was getting a lot of pressure to

13 (Pages 49 to 52)

	Page 53		Page 55
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1	send us back up to Norma, and I told him that	1	Q. Did you have any other reason to call him on
2	Mr. Tischer was sick. You say, I don't recall	2	the night of August 12th, 2017, other than the
3	that. And what I'm asking is does that sound	3	Jacob Tischer
4	like a possible conversation that you would	4	A. No, sir.
5	have had.	5	Q issue? What did he say when you talked to
6	A. I I don't want to make a speculation. I	6	him while you're at the shanty?
7	don't remember.	7	A. He said, Okay, that's fine.
8	Q. Did you ever have you ever had pressure put	8	Q. Did you when was the next time you talked to
9	on you by Mr. Martinez to move trains?	9	Mr. Swentik?
10	A. There's always pressure for every manager on	10	A. When he came in that night after the paramedics
11	the trains. I mean, that's our job. Our job	11	had already taken Jake to the hospital.
12	is to make sure trains get out on time, and we	12	Q. Was Mr. Swentik coming in solely for the
13	move freight. That's our job.	13	purpose of following up on the Tischer
14	Q. Was there any did you talk to Mr. Martinez	14	incident?
15	at all on August 12th, 2017?	15	A. Yes, sir.
16	A. No, sir.	16	Q. What was his role in once he arrived on
17	Q. Did you talk to Mr. Swentik is it Swentik?	17	scene?
18	A. Swentik, yes. S-W-E-N-T-I-K, Swentik.	18	A. Again, Tischer was already at the hospital at
19	Q. Did you talk to Mr. Swentik at any point before	19	that time, and then we both got in the vehicle
20	Mr. Tischer was transported by ambulance from	20	and went down to the hospital to inquire about
21 22	the depot?	21 22	how Jake was doing, and that's when we were
23	A. I talked to him right before I sent Tischer	23	told to leave.
23 24	back to the office to tell him we weren't doing	23 24	Q. So is Swentik just coming to the depot to meet
25	two pulls and I was sending him home. Q. Where was Mr. Swentik at the time?	25	up with you so then the two of you are going to the hospital?
	Page 54		Page 56
-		_	
1	A. At home.	1	A. Yes, sir.
2	Q. So he wasn't on duty?	2	Q. Did you know he was coming in to do that before
3	A. No, sir.	3	he showed up?
4	Q. Was he was that a regular time off for him?	4	A. No, sir.
5	A. Yes, sir. He works during the day.	5	Q. Was that your usual practice to when an
6 7	Q. So you called him at home while you're at the	6	employee has been transported to the hospital
8	shanty? A. In my car in the at the shanty, yes, sir.	7 8	to then go to the hospital? A. No, sir. I did that because I I like Jake,
9	Q. Why are you why are you calling Mr. Swentik	9	and I wanted to make sure he was okay.
10	at that point when he's at home?	10	Q. And did you in the course of communicating
11	A. To let him know that I'm sending the crew home	11	with Mr. Swentik I take it you didn't talk
12	without doing two pulls.	12	to Mr. Martinez that night?
13	Q. Why would your boss need to know that when he's	13	A. No, sir.
14	not on duty?	14	Q. Did you ever talk to Mr. Martinez about the
15	A. So in the morning, when he was on the morning	15	Tischer issue?
16	call, if they asked why we didn't do two pulls,	16	A. No, sir.
17	he would he would know that I sent the crew	17	Q. Do you know whether Mr. Swentik talked to Mr.
18	member home because he was ill.	18	Martinez about the Tischer incident?
19	Q. But was it your usual practice to call him when	19	A. I do not know his conversations with anybody
20	he's at home, or would you have some other way	20	else besides me.
21	of communicating that to him in the ordinary	21	Q. So is it your testimony that as soon as Mr.
22	course?	22	Franchuk told you that Jake Tischer was sick
23	A. I I talk to him not every night but most	23	that you immediately backed off the idea of
24	nights when I'm on duty. If I have an issue	24	sending him to the Norma sand plant?
4			
25	that concerns him, I would I would call him.	25	A. I was going to determine how how severe his

	Page 57		Page 59
1	-	1	
1	illness was.	1	Q. And Mr. Franchuk didn't think he was okay?
2	Q. Okay. So	2 3	A. Correct.
4	A. If it was just, you know, he was lightheaded, well, yeah, I probably would have had them go	3 4	Q. Did you have anybody else's input as of that point that you decided to send him home? Was
5	up again. But when I determined that his	5	it just you and Franchuk, or was there anybody
6	illness was more than that, I made the	6	else who was weighing into that process?
7	determination to send him home.	7	A. I honestly I didn't I wasn't thinking of
8	Q. So after you talked to Mr. Franchuk, you wanted	8	anybody else or trying to listen to anybody
9	more information from Mr. Tischer?	9	else. I was focused on Mr. Tischer.
10	A. Correct, since it was all about Mr. Tischer.	10	Q. And so the sending-him-home part, is is Mr.
11	Q. And you go and you talk to Mr. Tischer, and Mr.	11	Tischer calling to get a ride home?
12	Tischer says, I'm fine?	12	A. I told him to call his wife to come pick him
13	A. He says, I'm fine, I'm fine, I'm fine.	13	up.
14	Q. So stop right there. What is your thought	14	Q. Is that out of the ordinary? I'm assuming Mr.
15	process about going back to Norma after Mr.	15	Tischer drove to work that day.
16	Tischer says, I'm fine?	16	A. Correct.
17	A. Well, judging from my visualization of how he	17	Q. Do you know that to be true?
18	looks and and all, I determined that he was	18	A. Yes, sir. His his car was there.
19	sick enough to send him home.	19	Q. So his car is there. How did you make the
20	Q. So even though he's saying he's fine, you have	20	determination that you don't want him driving
21	made your determination in your mind as of that	21	home?
22	point he's not fine?	22	A. Well, again, like what Mr. Franchuk said, he
23	A. Correct.	23	I did see him stumble, and he leaned on his
24 25	Q. He's going home?	24 25	brake stick heavily. And from that, I
	A. Yes, sir.		determined that he wasn't suitable to drive
_	Page 58	_	Page 60
1	Q. And is that in your mind is that a safety	1	because of I guess of those issues.
2	issue at that point, or why not	2	Q. So, I mean, on the spectrum between a little
3	A. It's a	3	bit sick, able to work safely; and very sick,
4 5	Q send him A. I'm sorry.	4 5	not able to work safely, calling someone else to come get you to drive you home seems like
6	Q. Why not send him if he's if he if he	6	you're closer to the
7	looks a little sick but he says he's fine, why	7	A. Yes, sir.
8	not send him?	8	Q sick end of the spectrum?
9	A. Because he he'd looked not well enough to	9	A. Correct.
10	to go up a second time, and it was a safety	10	Q. Had you done that previously with employees
11	issue, and I didn't feel right sending him up	11	where you say, You know what, I'm going to send
12	for a second pull.	12	you home and I want you to call for a ride?
13	Q. Would you agree that there's a spectrum of	13	A. No, sir, I haven't said to actually call for a
14	sickness, that a person could be sick and still	14	ride. I have had people who have been sick
15	able to do their job safely; and then there's	15	enough to where I said, Go home.
16	the other end of the spectrum is they're sick,	16	Q. Sure.
17	and they're unable to do the job safely?	17	A. But not, No, you're not driving yourself home,
18	A. Correct.	18	no.
19	Q. And so in talking with Mr. Tischer, you were	19	Q. So deciding that not only are you sending Mr.
20	trying to make that evaluation, like how sick	20	Tischer home but that he's not driving himself
21	is he?	21	is an unusual event?
22	A. Correct.Q. And even though Mr. Tischer said, I'm okay, you	22 23	A. Yes, sir. Q. Do you know where Mr. Tischer lived relative to
22		4.5	O. DO VOU KHOW WHERE IVIT. I ISCHET HVEG TEIAHVE IO I
23 24			•
23 24 25	didn't think he was okay? A. Correct.	24 25	the depot? A. No, sir.

	Page 61		Page 63
1	Q. Or how long you know how long a drive it	1	and you're too sick to drive, so call for a
2	was?	2	ride, did you have in mind a theory about what
3	A. No, sir.	3	sickness was that he was experiencing?
4	Q. Did you ever come to an understanding of how	4	A. No, sir. I just thought maybe he had the flu
5	far away that was or how long it would take for	5	or he was very ill. I knew he like I said,
6	someone to get there?	6	we had the discussion. He was lethargic, and I
7	A. No, sir.	7	thought maybe it might be diabetes, and
8	Q. Was your thought that Mr. Tischer would make	8	everyone said, you know, maybe. And so
9	that call, though, to get someone to drive him?	9	because I know he didn't have diabetes, but it
10	A. Yes, sir. I instructed him to.	10	could have been undiagnosed. I don't know.
11	Q. Did you see him do that?	11	Q. What became of the Gatorade and the candy bar?
12	A. No, sir, because when he got in in the PTI	12	Did he ever eat that or drink that?
13	van, they're not allowed to have their cell	13	A. No. Because by the time I had gotten to the
14	phones on them, so he would have had to have	14	yard office, he was already on the ground.
15	waited until he got back to the office to call.	15	Q. Did you ever see anyone offer Mr. Tischer water
16	Q. I'm not sure I follow. Say that again.	16	when you were at the shanty?
17	A. So one of UP's rules is they're not allowed to	17	A. No, sir. I do not recall.
18	have their cell phones on them.	18	Q. Did you ever observe him having trouble opening
19	Q. Okay.	19	a water bottle?
20	A. So he wouldn't have had it on him until he got	20	A. No, sir.
21	back to the office or until he grabbed his grip	21	Q. You weren't here for Mr. Lux's deposition,
22	from from the from the cab of the engine.	22	which was yesterday, but I will represent to
23 24	Q. Because are they they're storing their	23 24	you that he said he at the point that you're
24 25	cell phones in?	25	at the shanty, he was in the PTI vehicle, and he waved his arms and shouted "no" to the issue
	A. In bags in the in the locomotive.		
1	Page 62	1	Page 64
1 2	Q. So how does Mr. Tischer get from the shanty to	1 2	of whether the crew was going to go back up to
3	his grip on the locomotive? A. I do not know. Like I said, he got in. He may	3	Norma. Do you have any recollection of that?
4			A No I do not
	have had it already in the in the PTI cah		A. No, I do not.
	have had it already in the in the PTI cab	4	Q. Did you have any conversation with Mr. Lux at
5	with him. I do not know.	4 5	Q. Did you have any conversation with Mr. Lux at any time before you went to the depot?
5 6	with him. I do not know. Q. So at that point that you're at the shanty, did	4 5 6	Q. Did you have any conversation with Mr. Lux at any time before you went to the depot?A. I do not recall, no.
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	Page 65		Page 67
1	said yes, and you concluded that he wasn't;	1	conductor up.
2	correct?	2	Q. So it's either Mr. Tischer and Mr. Franchuk or
3	A. Correct.	3	there's no second pull from the Norma sand
4	Q. So when he when you asked him if he needed	4	plant
5	medical attention and he said he didn't, did	5	A. Correct.
6	you take him at his word at that point?	6	Q that night?
7	A. Yes, I did.	7	A. Correct.
8	Q. And how did you differentiate between being	8	Q. At the point when you showed up at the depot
9	okay him saying that he's okay and your	9	so you left the shanty, you come to the
10	concluding that he's not versus him saying he	10	depot were you aware that Mr. Tischer had
11	doesn't need medical attention and you agreeing	11	thrown up en route to the depot?
12	with him?	12	A. Not until I arrived there at the at the
13	A. Because I believed the nature of his illness	13	depot myself.
14	didn't require medical attention at that time.	14	Q. So your determination to call 911 was based on
15	I just thought he was ill, but I knew he was	15	your observations of Mr. Tischer on the ground
16	he wasn't well enough to continue working.	16	and the facial drooping?
17	Q. Was there any was there any talk about	17	A. Yes, sir.
18	sending someone as a substitute for Mr. Tischer	18	Q. And the left side paralysis?
19	up to the Norma sand plant after you decided	19	A. Yes, sir.
20	Mr. Tischer couldn't work anymore?	20	Q. While you're talking to Mr. Tischer at the
21	A. No, sir.	21	shanty, was he coherent, to your thinking?
22	Q. Was that even a possibility?	22	A. Yes, sir.
23	A. It was a possibility, but it was unfeasible	23	Q. Was he slurring his words at all?
24	because by the time I would have got another	24	A. No, sir.
25	conductor here, Mr. Franchuk would have expired	25	Q. Did that change when you got to the depot?
	Page 66		Page 68
1	on his hours. So it was basically an	1	A. No, sir. He was still coherent.
2	impossible task to take a second pull with a	2	Q. So he was always coherent?
3	different conductor.	3	A. Yes, sir.
4	Q. And, you know, I I'm unfamiliar with exactly	4	Q. And never slurring his words?
5	how the rules work for that. But if you've got	5	A. No, sir.
6	other people you have Mr. Thomas and you	6	Q. Did you ever talk with did you ever talk
7	have Mr. Lowe standing at the shanty. Was it	7	with anyone else from Mr. Tischer's family
8	impossible to put them into the conductor role	8	beyond his brother
9	for the job with Mr. Franchuk?	9	A. Josh.
10	A. Correct, it's impossible to do that because	10	Q Josh?
11	they were assigned to the yard job, not the	11	A. No, sir. He's the only family member I talked
12	loco.	12	to.
13	Q. So you couldn't just mix and match?	13	Q. Did you answer any when the police arrived,
14	A. I can't mix and match, no, sir.	14	did you answer any questions for the police?
15	Q. So what you're saying is to substitute out for	15	A. Yes, sir. I don't remember what those
16	Mr. Tischer you got to call someone up fresh?	16	questions were, but it was just general
17	A. Correct. And that would be an hour and a half	17	information as to what the situation was.
18	call for them to get there, and then so, in	18	Q. Did you provide any information to the
19	other words, it would have been possibly two	19	paramedics when they arrived?
20	more hours after I determined to make a call to	20	A. Yes, sir. They asked me questions about his
21	get someone there before they he would be	21	situation, and I answered them. I also told
22	able to go back up.	22	them what the 911 caller (sic) had asked.
23	Q. And you're running short on Mr. Franchuk's time	23	Q. Was Mr. Tischer providing information to the
24	because he's been on duty	24	police?
25	A. Right. So it's not feasible to call a second	25	A. Yes, sir.

17 (Pages 65 to 68)

	Page 69		Page 71
1	Q. Was he providing information to the paramedics?	1	A. And I do not know that.
2	A. Yes, sir.	2	Q. But it is essentially they are a tenant on UP
3	Q. Was there anyone else other than you and Mr.	3	infrastructure up at Norma?
4	Tischer talking to the police or the	4	A. Correct.
5	paramedics?	5	Q. After August 12th, 2017, did you have any
6	A. No, sir.	6	involvement into the into an investigation
7	Q. You mentioned listening to the radio	7	about what had happened to Mr. Tischer?
8	communications, so that's one that's the way	8	A. No, sir.
9	you knew the train was coming back from Norma	9	Q. So you were here earlier today when Mr.
10	to Altoona. Do you know whether those radio	10	Franchuk related an account of a conversation
11	communications are recorded?	11	with Erik Erickson?
12	A. I believe they are, sir.	12	A. Yes, sir, I was here for that.
13	Q. Have you listened to any of those radio	13	Q. Were you present during that conversation with
14	communications since August 12th, 2017?	14	Erik Erickson?
15 16	A. No, sir. I've never listened to any radio	15	A. I do not even recall being at the Menomonie
16 17	communication that's been recorded.	16 17	terminal with them.
18	Q. Other than listening to it in real time as it's	18	Q. Have you ever had a conversation with Mr. Erickson about this incident?
19	happening? A. Correct.	19	A. I have, yes, sir.
20	Q. So you're monitoring the radio communications	20	Q. About this incident?
21	while you're working, but you haven't gone back	21	A. Yes, sir.
22	and revisited anything outside of real time?	22	Q. What is the conversation that you've had with
23	A. No, sir.	23	Mr. Erickson about this?
24	Q. Do you know whether there are any video	24	A. He basically told me I did nothing wrong, that
25	recording devices in the vicinity of the shanty	25	they that the company would basically fight
	Page 70		Page 72
1	that record that record video images of	1	on my behalf to say that I did nothing wrong.
2	anything?	2	Q. And did he actually use that word, "fight"?
3	A. There are no yard cameras, no, sir.	3	A. He said he would I don't no, he didn't
4	Q. Are there any yard cameras anywhere in the	4	use that exact word, but I was paraphrasing.
5	Altoona yard?	5	Q. Do you recall what how he specifically
6	A. No, sir.	6	described it?
7	Q. How about at the depot itself?	7	A. He basically said that they were going to
8	A. No, sir. There's no no recording cameras	8	they they knew I did nothing wrong, and they
9	anywhere in in the Altoona depot, Altoona	9	were going to make sure that everyone knew that
10	yard area.	10	I did nothing wrong.
11	Q. Are there any yard cameras up at Norma?	11	Q. Do you think that you did nothing wrong?
12	A. No, sir.	12	A. I did nothing wrong.
13	Q. Is that a yard yard proper?	13	Q. So when Mr. Erickson says that to you, he is
14	A. It is a yard, yes, sir. It's the but it's	14	confirming a belief that you already hold?
15 16	for the Wisconsin the WP or yeah. It's	15 16	A. Yes, sir.Q. Has he said anything else to you?
16 17	the we own it, but they rent it from us. So	17	A. No, sir.
18	it's their yard, and they do not have cameras either.	18	Q. Do you know there was another name mentioned
19	Q. But it's it's it's UP's infrastructure?	19	in the context of that Erik Erickson
20	A. It's UP infrastructure, but they rent it from	20	conversation, someone by the name of Sam Shinn.
21	us.	21	A. Yes, sir.
22	Q. So if if there were cameras, it would be	22	Q. Do you know who he is?
23	UP's cameras?	23	A. I do.
24	A. Unless they've installed them themselves.	24	Q. Who is it S-H-I-N?
25	Q. But you don't know that?	25	A. Two Ns.

Page 73 Q. Two — Q. A. SH-I-N-N. Q. And who is Sam Shinn? A. He was an MOP, a manager of operating practices. He has since gone back to his — 1 think it's, cither Texas, New Mexico, Arizona, so he's down southwest of the south somewhere. Q. What does an MOP do versus an MYO? A. An MOP, is he from the craft, which means he south somewhere. Q. What does an MOP do versus an MYO? A. An MOP, is he from the craft, which means he south somewhere. Q. What does an MOP do versus an MYO? A. An MOP, is he from the craft, which means he south somewhere. Q. What does an MOP do versus an MYO? A. An MOP, is he from the craft, which means he was an engineers. He does downloads on complete the south the hand the conjunctors are doing things correctly. Q. Would he handle like ops testing for engineers? A. Yes, sir. Q. Do you have any criticism of anything that Mr. Franchuk did on August 12th, 2017? A. No, sir. Q. Do you have any criticism of anything that Mr. Tischer ddo on August 12th, 2017? A. No, sir. Q. Do you have any criticism of anything that Mr. Tischer ddo on August 12th, 2017? A. No, sir. Q. Do you have any criticism of anything that Mr. Tischer ddo on August 12th, 2017? A. No, sir. Q. Do you have any criticism of anything that Mr. Tischer ddo on August 12th, 2017? A. No, sir. Tischer ddo on August 12th, 2017? A. No, sir. The WITNESS: Pin fine. MR. BANKER: Noed a break or keep going? THE WITNESS: I just need some water. COURT REPORTER: I would like just a couple minutes. (A break was taken.) Page 76 BY MR. BANKER: O Program, and ask you a couple minutes. (A break was taken.) Page 76 BY MR. BANKER: Noe and the means and ask you a couple minutes. (A break was taken.) Page 76 BY MR. BANKER: Noe a break or keep going? THE WITNESS: I just need some water. COURT REPORTER: I would like just a couple minutes. (A break was taken.) Page 76 BY MR. BANKER: Noe a break or keep going? The Witnesses of a decument. (A break was taken.) Page 76 BY MR. BANKER: Noe for the decument, the				
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4 Å. He's an engineer. Sometimes he's a conductor. practices. He has since gone back to his – I think an engineer. He's down in, I think it's, either Texas, New Mexico, Arizona, so he's down south somewhere. 9 Q. What does an MOP do versus an MYO? 10 A. An MOP, is he from the craft, which means he was an engineer, so he is basically in charge of the engineers. He does downloads on engines. He makes sure that all the engineers are doing things correctly. 10 Q. Was he present at any point on August 12th, 2017? 11 A. No, Sir. The makes sure that all the engineers are doing things correctly. 12 Q. You'dle he handle like ops testing for engineers? 13 A. Correct. 14 Correct. 15 Q. Would he handle like ops testing for engineers? 16 A. Correct. 17 A. Os are you saying that you just don't recall the conversation between Erickson and Franchuk. 18 Correct. 19 Q. So are you saying you have a specific recollection that it did not happen? 20 Q. Do you recall going with Sam Shinn and Erik 21 A. I — no, I do not remember that situation. 22 When he mentioned it today, I was hike — I did not remember that. 23 Erickson to speak with Mr. Franchuk? 24 A. I — no, I do not remember that situation. 25 Q. How about with John Thomas? 26 A. No, sir. 27 A. No, sir. 28 A. Hac's an engineer. So mich and pranchuk did not happen? 29 G. Do you recall going with Sam Shinn and Erik 29 A. No, sir. 20 A. No, sir. 31 G. We've talked a little bit about Mike Swentik, S.W-EN-NT-L-K. Have you had any other conversations with Mike Swentik about this incident other than what you've already described? 31 G. How about Harold Lowe? 32 A. I was not present at any point on August 12th, 2017? 33 A. I do not remember that situation. 34 A. Ves. we talked a but all the engineers? 35 A. Correct. 36 C. We've talked a little bit about Mike Swentik, S.W-EN-NT-L-K. Have you had any other conversations with Mike Swentik about this incident other than wat you've already described? 35 A. I — no, I do not remember that situation. 36 A. Ho's in the proposition Exhibits an	2	A. S-H-I-N-N.	2	
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A. An MOP, is he from the craft, which means he of the engineers. He does downloads on engines. He makes sure that all the engineers are doing things correctly. The conversation between Erickson and Franchuk, or engineers are oldered in that it did not happen? A. Yes. We all — we all do testing. Q. Would he handle like ops testing for engineers? A. Yes. We all — we all do testing. Q. Would he handle like ops testing for engineers? A. Yes. We all — we all do testing. Q. Would he handle like ops testing for engineers? A. Yes. We all — we all do testing. Q. Would he handle like ops testing for engineers? A. Yes. We all — we all do testing. Q. So are you saying that you just don't recall the conversation between Erickson and Franchuk, or engineers? A. I are on you saying by tha was a specific recollection that it did not happen? A. I are only the form that conversation. When he mentioned it today, I was like — I did not remember that. A. Yes we talked a little bit about Mike Swentik about this incident other than what you've already described? A. No, sir. Q. How about with John Thomas? A. No, sir. Q. How about with John Thomas? A. No, sir. BY MR. BANKER: So I'm going to switch gears now and show you a couple documents. How are you doing? THE WITNESS: I'm line. MR. BANKER: Need a break or keep going? THE WITNESS: I'm line. MR. BANKER: Need a break or keep going? THE WITNESS: I'm line. A. No, sir. A. I are for that conversation. A. I are for that conversation was like just a couple minutes. COURT REPORTER: I would like just a couple minutes. (A break was taken.) Page 76 BY MR. BANKER: Q. I want to show you some documents and ask you a couple of questions about them. So first I'm going to show you what's been previously marked as Deposition Exhibit 3. Are you familiar with the form of this document? A. No, sir. Q. How about with John Thomas? A. No, sir. Q. How about with John Thomas? A. No, sir. A. No, sir. Q. How about with John Thomas? A. No, sir. Q. How about with John Tho				
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19 (Pages 73 to 76)

	Page 77		Page 79
1	minutes, Landmark: Altoona. Do you see that?	1	to take a look at is UP001392, and there's a
2	A. Yes, sir.	2	there's a section with the heading that says
3	Q. Does that do anything to refresh your	3	Stroke. It starts on that Page 1392 and goes
4	recollection as to the time when this train got	4	to the next page, 1393. Can I ask you to just
5	back to Altoona from Norma?	5	read that, and then I have a question or two
6	A. No, sir.	6	about it.
7	Q. Or do anything to bracket the time when you	7	A. (Reading document.) Okay.
8	would have gone from the depot out to meet the	8	Q. Is that information about strokes on those two
9	train on the east end of Track 5?	9	pages information that you've ever received
10	A. No, sir. Because once he's released from	10	from UP before?
11	Chippewa, it's up to him as to when he gets	11	A. Yes, sir. Not in paper form, but when we were
12	back into the Altoona yard, and he he'll get	12	going through our CPR class, there was a slide
13	back there a lot sooner than the train will.	13	on this through I mean, we did all the CPR
14	So he'll go and he'll park down at the other	14	stuff, and they had a slide on strokes and
15	end and wait.	15	stuff, so we have had training on it, yes, sir.
16	Q. Another entry that's been the focus of some	16	Q. Have you heard of this FAST acronym
17	testimony is that at 8:15 p.m. this vehicle	17	A. Yes, sir.
18	parked in Altoona for a space of 20 minutes.	18	Q before? And so had you heard of the FAST
19	Do you see that?	19	acronym before August 12th, 2017?
20	A. Yes, sir.	20	A. When I went through this class, yes, sir.
21	Q. Does that do anything to refresh your	21	Q. When do you think you went through this
22	recollection about the time when you would have	22	first-aid class from UP?
23	been talking at the shanty?	23	A. My CPR class when I hired on in '14.
24	A. That's right about the same time I would have	24	Q. Is that something that you periodically do
25	gotten to the shanty, yes, sir.	25	refreshers on?
	Page 78		Page 80
1	Q. And then if you turn to Page 7, this vehicle	1	A. We're supposed to do annual refreshers.
2	goes to somewhere in Altoona where it remains	2	Q. Have you done annual refreshers?
3	parked for three hours and six minutes starting	3	A. I am currently not not certified.
4	at 8:53 p.m. Does that do anything to help you	4	Q. For first aid or CPR?
5	refresh your memory about when you were at the	5	A. For CPR.
6	depot?	6	Q. When was the last time that you took a
7	A. It would be about the same time I got there	7	first-aid or CPR refresher class?
8	because he was still in the vehicle. His leg	8	A. I do not recall. I was still up in Itasca, so
9	was still in the vehicle when I arrived.	9	it was a couple years ago.
10	Q. Can I have you look at why don't we set that	10	Q. What is the reason for not taking it on an
11	aside and put it here so I don't mix it up.	11	annual basis if you're supposed to take it on a
12	Showing you what's been previously marked as	12	annual basis?
13	Exhibit 9. Have you ever seen this document	13	A. Normally we do them at our it's AOT annual
14	before?	14	training, and we do that in Omaha. But the
15	A. No, sir, I have not seen this document.	15	last couple of years they haven't had us go to
16	/	16	AOT, and they've had other classes when we've
	Q. And I'll represent to you that this is a	16	
17	document that was produced by UP in discovery	17	gone, so I haven't picked it up.
17 18	document that was produced by UP in discovery as a larger book, and so I have taken out of	17 18	gone, so I haven't picked it up. Q. So do you get to select from a menu of options
17 18 19	document that was produced by UP in discovery as a larger book, and so I have taken out of that book the first page, the table of	17 18 19	gone, so I haven't picked it up. Q. So do you get to select from a menu of options about which courses you want to take?
17 18 19 20	document that was produced by UP in discovery as a larger book, and so I have taken out of that book the first page, the table of contents, and then a couple pages that have	17 18 19 20	gone, so I haven't picked it up. Q. So do you get to select from a menu of options about which courses you want to take? A. Yes, sir.
17 18 19 20 21	document that was produced by UP in discovery as a larger book, and so I have taken out of that book the first page, the table of contents, and then a couple pages that have some information about strokes. So if you look	17 18 19 20 21	gone, so I haven't picked it up. Q. So do you get to select from a menu of options about which courses you want to take? A. Yes, sir. Q. And so
17 18 19 20 21 22	document that was produced by UP in discovery as a larger book, and so I have taken out of that book the first page, the table of contents, and then a couple pages that have some information about strokes. So if you look in the bottom right-hand corner, there's a	17 18 19 20 21 22	gone, so I haven't picked it up. Q. So do you get to select from a menu of options about which courses you want to take? A. Yes, sir. Q. And so A. It was never one of the options.
17 18 19 20 21 22 23	document that was produced by UP in discovery as a larger book, and so I have taken out of that book the first page, the table of contents, and then a couple pages that have some information about strokes. So if you look in the bottom right-hand corner, there's a little number that starts UP	17 18 19 20 21 22 23	gone, so I haven't picked it up. Q. So do you get to select from a menu of options about which courses you want to take? A. Yes, sir. Q. And so A. It was never one of the options. Q. The first-aid refresher was never one of the
17 18 19 20 21 22	document that was produced by UP in discovery as a larger book, and so I have taken out of that book the first page, the table of contents, and then a couple pages that have some information about strokes. So if you look in the bottom right-hand corner, there's a	17 18 19 20 21 22	gone, so I haven't picked it up. Q. So do you get to select from a menu of options about which courses you want to take? A. Yes, sir. Q. And so A. It was never one of the options.

Page 81 Page 83 1 to give them an idea of what they need to do. 1 Q. Showing you what's been marked -- set that one 2 2 aside. Showing you what's been previously Q. Have you done -- have you used documents like 3 3 marked as Deposition Exhibit 8. Have you ever this to educate --4 seen that document before? 4 A. I have used documents similar to this, yes, 5 5 A. No. sir. 6 Q. Do you know what the type of -- what type of 6 Q. And so that would be for a crew that is 7 7 document it is? unfamiliar with the route or the job or what 8 A. I'm assuming it's probably duties and 8 industries they're servicing to sort of brief 9 responsibilities, but Mr. Ryan Shafer does not 9 them before they go on the trip? A. Yes, sir. 10 work in Altoona. He works in Adams in Itasca, 10 and he has no -- no responsibility for Altoona. 11 11 Q. As part of the pre-trip paperwork? 12 Q. What is a -- what is a -- you mentioned duties 12 A. Yes, sir. If it's -- if they have never done and responsibilities. Is that a term of art the job before, I would go over a document like 13 13 this just so they -- we're clear on what that you use? 14 14 15 A. It says duties right here (indicating). 15 their -- their job entailed. 16 Q. So you're looking at Page 3 of Exhibit 8? 16 MR. BANKER: Okay. Set that one aside. 17 A. Right. It says duties right there. 17 (Exhibit 14 marked for identification.) 18 Q. But, you know, I thought I heard you say duties 18 BY MR. BANKER: Q. Showing you what's been marked for 19 and responsibilities. 19 20 A. Sorry. That's a military term, duties and 20 identification as Exhibit 14. Take a moment, 21 responsibilities. I'm used to saying it that 21 if you would, to review it, and then I'll have 22 way. This is -- this is duties, basically what 22 a question for you. 23 they're responsible for. 23 A. (Complying.) Okay. 24 Q. And do you know where documents like this are 24 Q. First, is this a document that you've seen 25 maintained? 25 before? Page 82 Page 84 1 A. They're -- if -- if this was something that I A. I do not remember it, but I do see it's an 1 2 would have made, I would have put it on our 2 email from the nurse. 3 shared drive. 3 Q. Do you know Jessica Carson? Q. What is your shared drive? 4 A. Yes, sir. 4 5 5 A. It's a -- it's a shared space on the UP system Q. Who is Jessica Carson? where anybody can access -- actually, let me 6 6 A. She is our -- our -- the nurse for our region. 7 7 rephrase that. Any manager can access. The O. And is she located in Altoona? crews don't have access to this unless they 8 8 A. No, sir. 9 ask -- ask us for it or we print it off and 9 Q. Where is she located? A. St. Paul. No, I think she's down in -- she's give it to them. 10 10 11 Q. So because -- you know, it says LTS83, which 11 down in Mason City, I believe. is -- as I understand it, was the designation 12 12 Q. Have you ever met her in person before? of the job that Mr. Franchuk and Mr. Marvin --A. Yes, sir. 13 13 14 or you're Mr. Marvin -- Mr. Franchuk and Mr. 14 Q. At some sort of training function or --15 Tischer were doing on August 12th, 2017. 15 A. She comes up periodically to Altoona. She 16 A. Yes, sir. But, like I said, it's not his 16 makes regular visits. responsibility. Mr. Ryan Shafer does not work Q. And then this appears to be an email from her 17 17 to TCSU Manager Contacts, dash, All. Do you 18 in Altoona. 18 19 Q. But, in any event, if this was on a shared 19 see that? 20 20 drive, that's not something Mr. Tischer or Mr. A. Yes, sir. Franchuk would access; this is the sort of Q. What is -- what is -- do you know what TCSU 21 21 22 document that a manager would use to -- to 22 stands for? 23 what? -- teach them about what their job is? 23 A. Twin Cities Service Unit. 24 A. This would be the sort of document we would use 24 Q. Is Altoona in the Twin Cities Service Unit for 25 for a crew that has never done the job before 25

21 (Pages 81 to 84)

Page 85 Page 87 1 MR. HAYDEN: Objection. Speculation. 1 A. It was at the time, yes, sir. 2 2 Q. So at the time you mean when it's sent, A. I -- I do not know. 3 August 14th, 2017? 3 BY MR. BANKER: 4 A. Correct. We are now part of the Great Lakes 4 Q. To the best of your knowledge. 5 5 Service Unit. A. I do not know. 6 Q. When did that change? 6 Q. If you were the only manager involved in 7 7 recognizing the signs and symptoms of Mr. A. This last year. 8 8 Tischer's stroke, I would interpret this as an Q. So August 14, 2017, the email sent to Twin 9 Cities Service Manager Unit Contacts, is that a 9 email congratulating you on your actions that 10 list of addresses? 10 day. 11 A. It's a generic list of addresses for all 11 MR. HAYDEN: Calls for speculation. 12 managers in the Twin Cities Service Unit. 12 A. That's not a question. What -- what's the 13 Q. Would you have been on that list on 13 question? August 14th, 2017? 14 14 BY MR. BANKER: 15 A. Yes, sir. 15 Q. Well, do you recognize it as such? 16 Q. But sitting here today, you're not able to say 16 whether you received this email or saw it 17 17 Q. Were you ever congratulated by anyone for your 18 before? 18 actions that day? 19 19 A. I do not remember the email, no, sir. A. No, sir. 20 Q. Did you ever have a conversation with Jessica 20 Q. Have you ever -- is Ms. Carson part of a larger 21 Carson about the Tischer incident? 21 medical department at UP? 22 22 A. She's one of the nurses. There's a bunch of A. No. sir. 23 Q. Did you ever have any conversation with 23 different -- they -- each service unit has a 24 Mr. Swentik about the stroke protocol, the FAST 24 25 protocol, after Mr. Tischer's incident? 25 Q. Who does Ms. Carson report to as a nurse? Page 86 Page 88 1 1 A. I do not know that information. A. No. sir. Q. Was there any discussion with UP employees 2 Q. Have you ever talked with someone up the chain 2 after August 12th, 2017, about this FAST 3 from Ms. Carson about Mr. Tischer's incident? 3 4 4 protocol? A. No, sir. 5 5 MR. HAYDEN: If you know. You can't speak Q. Have you ever talked with anyone who is 6 6 connected with the medical department about Mr. for --7 7 A. I -- I -- I can't tell for certain. I only Tischer's incident? 8 8 know what I -- what I know. A. No. sir. 9 9 BY MR. BANKER: (Exhibit 15 marked for identification.) Q. So on the second page of this email, it says, 10 10 BY MR. BANKER: 11 Good job to all involved in recognizing the 11 Q. Showing you what's been marked as Exhibit 15. 12 signs and symptoms of stroke in our recent 12 Are you familiar with the form of this 13 document? 13 issue and acting quickly on behalf of the 14 employee, followed by four exclamation points. 14 A. Yes, sir. It's a log of all of the jobs that 15 Tischer worked and what days he worked them. Do you see that? 15 16 A. Yes, sir. 16 Q. If you see in the lower right-hand corner, there's again that UP with a number after it on 17 17 Q. Other than you, were there any other managers in the Twin Cities Service Unit who were each page? 18 18 19 involved in recognizing the signs and symptoms 19 A. Yes, sir. 20 20 of a stroke relating to Mr. Tischer? Q. And on Page UP00774 it appears to start another A. No, sir. I was the only manager present. 21 kind of information. Do you see that? 21 Q. Were there any other UP employees that you're 22 22 A. What are you wanting me to look at? 23 aware of in the Twin Cities Service Unit on or 23 Q. So the header at the top of the page. 24 about August 14th, 2017, that could have been 24 A. On duty times. 25 the subject of Ms. Carson's email? 25 Q. So on the first page of Exhibit 15 it's Off

22 (Pages 85 to 88)

	Page 89		Page 91
-		-	
1	Duty Time Between Trips, and then on the	1	Q. Can Mr. Franchuk do it on behalf of Mr.
2	internal Page 774 it's On Duty Time for	2	Tischer?
3	Tischer. Do you see that?	3 4	A. No, because that would require him to know his
4	A. Yes, sir.	5	password to get into his personal system.
5 6	Q. What information is being documented by these	5 6	Q. So it's tied into the individual?
7	two reports? A. Well, the first part of the document is telling	7	A. Yes, sir.Q. And no individuals can do that on behalf of
8	how much time he has between times he works,	8	anybody else?
9	and the second part shows actual on his duty	9	A. The only thing I can think of would be if one
10	time how long he worked on each specific job.	10	of the CMS managers would have did it because
11	Q. So do you make any use of an off duty time	11	of the situation just to tie him up to get
12	report as MYO for UP?	12	to get him off the clock because otherwise he'd
13	A. No, sir.	13	still be continue he'd still be on duty
14	Q. Are you able to look at the last page of the	14	right now.
15	off duty time, which has a Bates Stamp	15	Q. But you don't have any recollection of being
16	UP000773, and the last entry there for	16	involved in that or
17	August 12th and tell me how much off duty time	17	A. There's there's no possible way myself or
18	there was for Mr. Tischer?	18	Franchuk could have logged him out
19	A. Well, on this it shows he had 19 hours off, 19	19	Q. Sure.
20	hours and 20 minutes.	20	A unless we knew his password.
21	Q. How much time is he required to have?	21	Q. But how about contacting the CMS folks and
22	A. 10 hours off.	22	saying, Hey, we had just had a
23	Q. 10 hours off in between jobs?	23	A. I never discussed anything with CMS managers.
24	A. Yes, sir.	24	I never had discussions with CMS managers.
25	Q. And then on the on duty time, really focusing	25	Q. So looking back at August 12th of 2017 and Mr.
	Page 90		Page 92
1	on the last page of Exhibit 15 for the entry of	1	Tischer's incident, as you sit here today, do
2	August 12, 2017, what is that communicating to	2	you wish that you'd done anything differently?
3	us about Mr. Tischer's work?	3	A. No, sir. I did everything within my power I
4	A. It shows he was on duty for 8 hours and 48	4	could at that time.
5	minutes.	5	Q. Do you feel that you should have called 911
6	Q. And so he began work at 2:02 p.m.?	6	before you did?
7	A. Yes, sir.	7	A. No, sir. As soon as I identified the symptoms
8	Q. And he is off work at 10:50 p.m.?	8	of a stroke, I made the phone call.
9	A. Yes, sir.	9	MR. BANKER: I have no further questions.
10	Q. And how does this information get created? Is	10	BY MR. HAYDEN:
11	this information that Mr. Tischer is creating	11	Q. I just have a few. Bounce around a lot. My
12	by punching into a system on a computer or	12	apologies. Kind of pick up where Mr. Banker
13	A. The way it works with conductors and engineers	13	left off. I think this was Exhibit 15.
14	is the CMS manager puts them on duty at a	14	Showing you Exhibit 15 on Page UP000773. You
15	specific time, so the CMS manager would have	15	see that?
16	put him on duty at 2:02 p.m.	16	A. Yes, sir.
17	Q. Okay.	17	Q. Now, this is I think you were asked about
18	A. And then it's up to the crews to log in the	18	the last entry there that indicates this is,
19	time they complete their job.	19	again, just to reorient you
20	Q. Okay. Do you know whether it was Mr. Tischer	20	A. Yeah. It was off duty.
21	who logged out of the system at 10:50 p.m.?	21	Q. Off Duty Time Between Trips. Okay. In the
22	A. I do not know who logged him out.	22	last one the last entry there on that page
23	Q. I take it you did not?	23	was you were asked about that, and that's
24	A. No, I'm not a I have I have no privileges	24	the 19 hours and 21 minutes starting on
25	in doing that. I cannot do it for anybody.	25	August 11th at 1841 hours until he tied up

Page 95 Page 93 1 on -- or sorry -- until he started his shift on 1 A. No, sir. 2 August 12th, 2017, at 1400 and 2 hours; 2 Q. Or any -- be specific. Any lack of coherence or lack of clarity in their speech? 3 correct? 3 4 A. Correct. 4 A. No, sir. 5 O. I'm interested in the one before that. Does --5 Q. Nobody told you anything about that? 6 6 A. No, sir. does the entry right above that from -- that 7 shows an off duty time from August 6th of 2017 7 Q. Nobody told you that he was having a stroke in 8 to August 11th of 2017. Am I reading that 8 their -- in their opinion? right because that totals 110 hours and 36 9 9 A. No. sir. 10 minutes? 10 Q. Nobody told you that they observed Mr. Tischer A. That's correct. 11 11 experiencing weakness or paralysis in his left 12 Q. Okay. So he -- he did not work during that 12 arm or leg? period of time? 13 13 A. No. sir. A. Correct. He had 110 hours and 36 minutes of 14 14 Q. When you told Mr. Tischer that -- well, first off duty time. of all, did Mr. Franchuk indicate to you --15 15 16 Q. Any idea just by recollection or by anything on 16 strike that. Let me try it a third time. You these documents about why he was off for those, 17 17 were here when Mr. Franchuk testified earlier 18 I guess, that's five days or so? 18 today that he expressed to you his opinion that Mr. Tischer should be sent home? 19 A. Again, he was on the extra board, so it just 19 20 depends on when he was on -- next in line to be 20 A. He told me that he was ill. He said he -- he 21 21 looked sick. 22 Q. Okay. Looking next -- I'll show you my copy of 22 Q. And that he thought that it would be best if he 23 Exhibit -- I forget which one it is. 23 was sent home? 24 MR. HAYDEN: Which exhibit is the booklet? 24 A. He had said that, yes, sir. 25 MR. COHEN: 9. 25 Q. That's when you and Mr. Franchuk were talking Page 94 Page 96 1 over by the unit? 1 MR. HAYDEN: 9. Thank you. 2 BY MR. HAYDEN: 2 A. Correct. 3 Q. Showing you Exhibit 9, and I'm referring to 3 Q. And after that conversation that you had with 4 UP001392, the section about strokes. Do you 4 Mr. Franchuk, did Mr. Franchuk go back up into 5 5 see that? the unit? 6 6 A. Yes, sir. He had -- he had to keep in control A. Yes, sir. 7 7 Q. And there's an embedded video there. Do you of his -- his engines. 8 Q. And is that where he stayed, in the engine in 8 remember seeing this video as part of your 9 training? 9 the locomotive, for the rest of the time that A. Yes, sir. 10 10 you were there near the shanty? 11 Q. The -- the -- is that a still photo from the 11 A. As far as I know, because that was his 12 video that you --12 responsibility. A. That is. And on the next page is another still 13 13 Q. Did you talk to Mr. Franchuk about the 14 from that video. 14 possibility or suspicion you had that maybe Mr. Tischer was suffering from a diabetic reaction? 15 O. And do you remember that to be sort of a 15 dramatization of a gentleman displaying 16 A. It was -- yes, sir. It was him and -- and the 16 stroke-like symptoms? switch crew that was there. We all kind of 17 17 18 A. Yes, sir. 18 talked about it. 19 Q. Just to be clear, there was nobody that day, 19 Q. And, again, referring you to Exhibit 9. In this training that Union Pacific provided to 20 any -- any fellow employees or anyone, really, 20 21 or Mr. Lux even, who told you about their 21 you, there was also training on hypoglycemia. observations that Mr. Tischer had any face Do you see that on Page 1393? 22 22 A. I do. 23 drooping? 23 24 A. No, sir. 24 Q. And that -- that's another word, it says there, 25 25 for diabetes; right? Q. Or any problems speaking?

Page 99 Page 97 1 1 Q. The train -- if you remember the train that was A. Yes, sir. 2 2 Q. And that to, Suspect hypoglycemia with anyone made up that was pulled back from Norma that 3 3 who begins to act oddly or becomes confused. arrived in Altoona, do you know how long that 4 Do you see that? 4 train was? 5 5 A. Yes, sir, I see that. A. I do not recall. 6 Q. Was that something -- did you observe Mr. 6 Q. Typically at the time the sand trains were how 7 7 Tischer acting oddly? 8 8 A. Yes, sir. A. It depended. They're really heavy, so they 9 can't be very long. Track 5 isn't a very long 9 Q. And did you observe him being pale in -- in 10 face with his skin? 10 track. It's -- don't quote me on this, but it's roughly around 3,000 feet long. Something 11 11 12 Q. Is that one of the reasons that you went to get 12 like that. I have to look it up. But it's, 13 him a candy bar and Gatorade after you sent him 13 you know, 3,000 feet, which is not a very long 14 14 home? 15 A. Yes, sir. 15 Q. First time -- is the first time you saw any of 16 Q. Not only talked to Ms. Lukehart, but did you 16 the signs of or symptoms of a stroke the --17 provide her a typewritten -- short typewritten 17 when you saw Mr. Tischer at the depot on the 18 statement of your recollection of events that 18 ground next to the PTI van? A. Yes, sir. 19 day? 19 20 A. I -- I believe so. I don't remember for 20 Q. And that's why you called 911? 21 21 A. Yes, sir. 22 22 Q. Was it -- I think you were asked this already. Q. The decision to not send Mr. Tischer and -- and 23 But was your -- the information you shared with 23 Mr. Franchuk, for that matter, back up to -- on 24 Ms. Lukehart consistent with what you testified 24 -- on the late power back up to get the --25 to today? 25 more -- the second pull, was that your own Page 100 Page 98 1 1 decision? A. Absolutely. 2 Q. You offered -- did you offer Mr. Tischer 2 A. That was my decision. 3 medical care? Did you ask him if he needed it? 3 Q. When you talked to Mr. Swentik, did he 4 A. I asked him if he needed medical care, yes, 4 challenge you at all on that decision? 5 5 A. No, sir. sir. 6 6 Q. What did he say? Q. Did you have to run it by Mr. Swentik? 7 7 A. A couple different times he said he was fine A. No, sir. I just called to let him know what 8 every single time I asked him. 8 was going on, that I was sending him home. 9 Q. Mr. Tischer -- flip side. Reverse question. 9 Q. And you were never disciplined for that or --10 Did Mr. Tischer ever ask you to provide -- to 10 A. No, sir. 11 take him to medical care? 11 Q. -- challenged by anybody above you in A. No, sir. 12 12 hierarchy? 13 Q. To take him to the emergency room? 13 A. No, sir. 14 A. No, sir. 14 Q. There's a term in the railroad, taking someone 15 Q. Did Mr. Tischer ever ask you to call 911? 15 out of service. Are you familiar with that? A. No, sir. A. Yes, sir. 16 16 Q. Is that what you did on the 12th of August 2017 17 Q. Did Mr. Tischer -- did you ever hear --17 with respect to Mr. Tischer? 18 overhear Mr. Tischer saying to anyone when you 18 19 guys were at the shanty that he -- that someone 19 A. In effect, yes. 20 should call 911 on his behalf? 20 MR. HAYDEN: Those are my questions. 21 21 MR. COHEN: Good afternoon. My name is A. No, sir. 22 O. Or that someone -- or that he would like 22 Mike Cohen. I represent PTI. 23 medical care, he would -- desired medical 23 BY MR. COHEN: 24 treatments? 24 Q. I'm going to skip around a little bit. Could 25 25 A. No, sir. If he did, I would have provided it. you put Exhibit 9 in front of you and

25 (Pages 97 to 100)

Page 101 Page 103 specifically the page Bates Stamped UP1392. 1 you arrived at the depot. Do you remember 1 2 A. I'm there. 2 saying that? 3 Q. And I'm calling your attention to that page and 3 A. Yes, sir. 4 the page after that under the heading Stroke. 4 Q. How did you become aware that Mr. Tischer had 5 Do these training materials list vomiting as a 5 thrown up? 6 sign of a stroke? 6 A. I -- I believe Mr. Lux told me, and then I 7 A. Doesn't say vomiting, no, sir. 7 looked in the vehicle to see, and it was just a 8 O. Thank you. Okay. What is the relationship 8 lot of fluid. There wasn't any type of mass or between UP and PTI, if you know? 9 9 anything involved. A. PTI provides services to the UP in transporting Q. And did Mr. Lux tell you that Mr. Tischer had 10 10 11 personnel, conductors and engineers, to and thrown up immediately upon your arrival? 11 12 from their power and to and from their vehicles 12 A. I don't know if it was immediately upon and to and from -- like up in Norma, from the arrival, but he did notify me of the -- of the 13 13 head end and the rear end of the train. 14 14 15 Q. Was Mr. Lux a driver for PTI on the day we've 15 Q. Was -- did he tell you that Mr. Tischer had 16 been talking about? 16 thrown up soon after he saw you? 17 A. He said it was just on the way back from the A. Yes, sir. 17 shanty to the depot is when he threw up. 18 O. And who delineates where -- strike that. Who 18 19 Q. How long approximately was it from the time 19 decided where Mr. Lux is to drive his van? 20 A. We have two vans normally on duty on a 20 -- 24 20 that you arrived at the shanty until Mr. Lux hours a day. There's an 8-hour van and a told you that Mr. Tischer had thrown up? 21 21 22 12-hour van. Mr. Lux was the 12-hour van. And 22 A. Well, the shanty is the beginning of the whole the 12-hour van's responsibilities are to 23 23 scenario. 24 assist the 83 job and to assist whenever needed 24 Q. I apologize. You're right. Strike that. How long between the time you arrived at the depot 25 in the yard. 25 Page 104 Page 102 1 1 Q. Who specifically directs Mr. Lux where to go and the time -- strike that again. I'm sorry. 2 and when to do it? 2 I'm not phrasing this correctly. How long was 3 A. I went out and told him to help 83, and then 3 it between the time you arrived at the depot 4 once I've told him, then it's up to the 4 and the time Mr. Lux told you that Mr. Tischer 5 conductor to tell him where he needs him. 5 had thrown up? 6 Q. And I'm talking more generally. Is it the UP 6 A. I do not recall because at that time I was 7 7 employees' responsibility to tell Mr. Lux where focused on Mr. Tischer and -- because he was 8 8 to go? having a stroke. A. Yes, sir. 9 Q. Fair to say it was a short amount of time? 9 A. Yeah, it was very short. 10 Q. Is Mr. Lux permitted to go where he wants to 10 go? Q. You mentioned before that you don't have any 11 11 12 A. No. sir. 12 criticism of Mr. Lux in relation to this 13 Q. If Mr. Lux decided to go drive to Wisconsin 13 incident; is that correct? 14 Dells, I take it that you would be unhappy with 14 A. Correct. that decision because he wouldn't be available 15 15 Q. Is it fair to say you also don't have any to provide the services that PTI is supposed to 16 criticism of PTI in relation to the incident 16 provide; is that correct? 17 17 with Mr. Tischer? A. Correct. 18 18 A. That's correct. 19 Q. Has Mr. Lux ever failed to follow your 19 Q. All right. And you don't believe that Mr. 20 Tischer -- I'm sorry. Strike that. You don't 20 directions or the directions of any PTI --21 strike that -- any UP conductor, to your believe that Mr. Lux or PTI failed to provide 21 Jacob Tischer with aid and assistance as 22 knowledge? 22 23 A. No, sir. He was a good driver. 23 reasonable persons would render under similar Q. Thank you. You mentioned earlier that you were 24 24 circumstances? 25 not aware that Mr. Tischer had thrown up until 25 A. Correct.

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1	Q. It's not your belief?	1	remember saying.
2	A. It's not my belief.	2	Q. Mr. Lux never approached you about calling 911
3	Q. It's not your belief, is it, that PTI or Mr.	3	or or getting Mr. Tischer any medical care?
4	Lux failed to recognize medical conditions and	4	A. No, sir.
5	provide or obtain medical treatment despite	5	MR. HAYDEN: Okay. No further questions.
6	observations requiring the same; correct?	6	MR. COHEN: No further questions.
7	A. Correct.	7	MR. BANKER: None.
8	Q. It's not your belief, is it, that Mr. Lux	8	MR. HAYDEN: All right. We're done.
9	well, strike that. It's not your belief, is	9	(Proceedings concluded at approximately
10 11	it, that PTI failed to properly train employees	10 11	3:06 p.m.)
12	regarding recognizing and handling medical medical emergencies on the transport vans;	12	
13	correct?	13	
14	A. I do not know what the type of training that	14	
15	PTI drivers get.	15	
16	Q. Fair enough. Not your belief, is it, that PTI	16	
17	failed to follow or establish reasonably safe	17	
18	protocols regarding medical emergencies;	18	
19	correct?	19	
20	A. I again, I do not know their policies or	20	
21	procedures.	21	
22	Q. Okay. It's not your belief, is it, that PTI	22	
23	failed and neglected to provide and implement	23	
24	emergency action plans and otherwise causing	24	
25	delay in response in the response of	25	
	Page 106		Page 108
1	emergency responders; correct?	1	STATE OF WISCONSIN)
2	A. Again, there's nothing published. There's I)ss
3	do not know any of their policies.	2	COUNTY OF EAU CLAIRE)
4	Q. You have no reason to believe, do you, that Mr.	3	,
5	Lux caused a delay in the response of emergency	4	I, Stephanie Peil, Notary Public in and for the
6	responders; correct?	5	State of Wisconsin, certify there came before me the
7	A. No, he did not.	6	deponent herein, namely Stephen Mark Marvin, who was
8	MR. COHEN: Thank you very much. I have	7	by me duly sworn to testify to the truth and
9	no further questions.	8	nothing but the truth concerning the matters in this
10	MR. BANKER: Nothing further for me.	9	cause.
11	MR. HAYDEN: Just one follow-up for me.	10	I further certify that the foregoing transcript
12	BY MR. HAYDEN:	11 12	is a true and correct transcript of my original stenographic notes.
13	Q. I think you testified earlier you you let	13	I further certify that I am neither attorney or
14	me you never were in the van with Mr. Lux	14	counsel for, nor related to or employed by any of
15	and Mr. Tischer?	15	the parties to the action in which this deposition
16	A. No, sir.	16	is taken; furthermore, that I am not a relative or
17	Q. Tell us the extent of your conversations with	17	employee of any attorney or counsel employed by the
18	Mr. Lux other than the one you just described	18	parties hereto or financially interested in the
19	about the vomiting incident back in the	19	action.
20	A. I we never had any discussions except for	20	IN WITNESS WHEREOF, I have unto set my hand and
21	when we were back at the depot, and then he	21	affixed my Notarial Seal this 1st day of August,
22	told me he vomited. And that's I don't	22	2019.
23	remember any and after me instructing him	23	
24	to to put a pillow or something underneath	24	
25	his head to support his head. That's all I	25	Stephanie J. Peil, Notary Public

27 (Pages 105 to 108)